IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5714

LINDA JENNES, ET AL.,

Appellants,

—v.—

BEN W. FORTSON, SECRETARY OF STATE OF GEORGIA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

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IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Civil Docket 13515

3 Judges—NE, AJH & GBB

GEORGIA SOCIALIST WORKERS PARTY, LINDA JENNESS, JOSEPH FREDERICK COLE, FRANCIS GRINNON, CLIFFORD D. CONNER, and JIM GWIN

vs.

BEN W. FORTSON, JR., Individually and as Secretary of State of the State of Georgia

ATTORNEYS

For plaintiff:

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1154 Cit. Trust Bank Bldg.
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For defendant:

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ROBERT J. CASTELLANI, Asst. Atty. Gen.
State Judicial Building
40 Capitol Square, S.W.
Atlanta, Georgia 30334

DATE		PROCEEDINGS
1970		
Feb.	18	Complaint filed seeking declaratory and injunctive relief, praying for THREE JUDGE COURT, advancement of case on docket & give hearing on preliminary injunction.
		Application for the convening of a three-judge district court, filed with memo in support.
		Motion for preliminary injunction, with brief in support, filed. (Copy of above to NE) rms
Mar.	3	Marshal's return on service as to summons, complaint & motion, executed Feb. 23, 1970, filed. jwe
	11	Order of Chief Judge John R. Brown, 5th Circuit, designating District Judges Edenfield & Henderson and Circuit Judge Bell to compose of a 3 judge court, filed. Copy to counsel.
		COPY OF PLEADINGS TO DATE TO EACH JUDGE. mjw
	13	Order extending time to Mar. 30, 1970, for deft. to file any response to pltf's. complaint, filed. (Copies fur. by Counsel.) (Copy to ea. Judge) pwm
	17	SUBMITTED ON PLTFS'. MOTION FOR PRELIMINARY INJUNCTION (Copy of docket sheet to each Judge) jwe
	30	DEFTS. ANSWER, with Exhibit "A", filed. (Copy to each Judge) To NE pwm
Apr.	9	Pltfs.' motion for leave to Amend Complaint and AMENDMENT & Order allowing AMENDMENT filed and that the complaint be amended as therein, subject to objection, filed. Copies furnished by counsel. (Copy to each judge) To NE. mjw
	14	Per three judge panel, set for hearing on all issues on Tuesday, May 12, 1970 at 10:00 A.M., Notice to counsel and to the Attorney General and Governor, State of Georgia per rules of Civil Procedure. jsw

DATE		PROCEEDINGS
1970		
Apr.	15	Pltf's. Motion for summary judgment, with affs. of LINDA JENNESS, JOSEPH FREDERICK COLE, & DOUGLAS JENNESS, brief in support and proposed findings of fact & conclusions of law, filed. (Copy to ea. Judge) pwm
	29	Pltf's trial brief, filed. (copy to each judge) pwm SUBMITTED ON PLTFS. MOTION FOR S.J. pwm
May	7	Stipulations of parties, filed. To NE. (Copy to each Judge). jwe
		Trial brief of defendant, filed. To NE. (Copy to each Judge). jwe
	12	HEARING had before 3-Judge Panel on merits. Court directed counsel to file memorandum as to no. of qualifying names to get on election ballot in all States, within one week, THEN SUBMIT. rms
	19	Pltfs' post-hearing brief, filed. To NE. (Copy to ea. judge.) pwm
		Appendix on nominating petition requirements of states of Minnesota thru Wyoming—filed by deft. (Copy to ea. judge) rms
	25	SUBMITTED PURSUANT TO ORDER OF MAY 12. pwm
June	9	Order extending deadline to qualify for state office for pltfs in this action who allege themselves to be prospective candidates, until June 22, 1970, at 12:00 noon, pending further orders of this Court, filed. (Copy to ea. judge; copy to counsel) To NE. jwe

DATE		PROCEEDINGS
1970		
June	10	Supplemental Order filed modifying the order of June 9th by inserting the words "and federal" after the word "state" and before the word "office" in the third line of the second paragraph. (Copy to each judge; copy to counsel) To NE. mjw
	22	Order of ct. (3 judge) filed at 11:15 a.m. Ordering & Directing that if pltfs. comply with nominating petition requirements of this opinion by filing their notice of candidacy accompanied by petitions with appropriate numbers of signatures by 9-1-70, their names shall be entered on ballot, and deft. is ENJOINED from further exacting from them a qualifying fee in such event and upon a showing of inability to pay the fee due to poverty. Copy to counsel; copy to each judge; To NE. mjw
July	22	Pltfs' Notice of Appeal to the Supreme Court from the Order ent. 6-22-70, filed. Copy to counsel, U. S. Sup. Ct. & to each judge. To NE. jwe
	24	Per NE—Since notice of appeal from the order of 6-22-70 has been filed, no judgment will be entered at this time. FILE HERE. jwe
Sept.	11	PER NE—*ORIGINAL* RECORD ON APPEAL MAILED TO U.S. SUP. CT. VIA REG. MAIL—RRR. (Acknow.) jwe

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13515

[File Endorsement Omitted]

GEORGIA SOCIALIST WORKERS PARTY, LINDA JENNESS, JOSEPH FREDERICK COLE, FRANCIS GRINNON, CLIFFORD D. CONNER, and JIM GWIN, PLAINTIFFS

v.

BEN W. FORTSON, JR., Individually and as Secretary of State of the State of Georgia, DEFENDANT

COMPLAINT—Filed February 18, 1970

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C., Sections 1331, 1343, 2201, 2281, and 2284, and 42 U. S. C. Sections 1971, 1981, and 1983, this being an action which arises under First and Fourteenth Amendments, United States Constitution. Plaintiffs seek declaratory and injunctive relief against the operation, execution, and enforcement of Georgia statutes which infringe upon their rights of expression and to vote by denying some of them places on the ballot.

2. The amount in controversy, exclusive of interests and costs, exceeds the sum or value of Ten Thousand ($10,000.00) dollars.

3. Plaintiff, GEORGIA SOCIALIST WORKERS PARTY (hereafter GSWP) is an unincorporated association of persons devoted to the ideals of socialism through participatory democracy. The purpose of the Party shall be to educate and organize the working class for abolition of capitalism and the establishment of a workers' Government to achieve socialism. It has run candidates for political office in the State of Georgia in the past and intends to offer candidates for election for the positions of Governor, and Congressmen, from the Fourth and Fifth Congressional District in 1970. It is a "political organization" within the meaning of § 34-103(t), Ga.

Code Ann. (1968), and registered as such with the Secretary of State of the State of Georgia.

4. Plaintiff LINDA JENNESS is a citizen of the United States and of the State of Georgia, residing in Atlanta, Fulton County, Georgia. She will be thirty years of age in time to assume office as Governor following the 1970 elections. She is the GSWP candidate for Governor and a member of the State Executive Committee. She has been a resident of Georgia for 23 years and is not otherwise disqualified from running for office.

5. Plaintiffs JOSEPH FREDERICK COLE and FRANCIS GRINNON are the GSWP candidates for Congress in the 4th and 5th Congressional Districts, respectively. Each will be twenty-five years of age at the time of the election, resident in Georgia for over a year, and not otherwise disqualified from office. They are citizens of the United States and of the State of Georgia, residing in Atlanta, Fulton County, and Decatur, DeKalb County, respectively. Plaintiff Grinnon is a member of the State Executive Committee of the GSWP.

6(a). Plaintiffs CLIFFORD D. CONNER and JIM GWIN are citizens of the United States and of the State of Georgia, residing in the City of Atlanta. Plaintiff Conner resides in the Fourth Congressional District and plaintiff Gwin resides in the Fifth Congressional District. Each is a registered voter and fully eligible to vote in the 1970 election for Governor and Congress. Each desires to vote for and associate with GSWP candidates. Plaintiff Conner is Vice Chairman and a member of the State Executive Committee of the GSWP.

6(b). This is a cross action by plaintiffs CONNER and GWIN on behalf of all other registered voters in the State of Georgia desirous of having an opportunity to consider persons on the ballot other than nominees of the Democratic and Republican parties. They bring this action according to Rule 23(a) and (b)(2), F.R.C.P. Such class is too numerous to bring before this Court, but their interests as a practical matter may be affected by the outcome of this lawsuit. They share common questions of law and fact with the plaintiffs against the

named defendant. Plaintiffs CONNER and GWIN adequately represent their class.

7. Defendant BEN W. FORTSON, JR., is Secretary of State of the State of Georgia. His office and place of business is located at the Capitol, Atlanta, Fulton County, Georgia, within the jurisdiction of this Court. As Secretary of State, he is charged by law with accepting nominating petitions for State and Federal offices, and with the setting of fees for persons not nominated by political parties who qualify to run for State and Federal offices. He is sued individually and in his official capacity.

COUNT ONE

8. Under the laws of the State of Georgia, a political party is any political organization which at the preceeding gubernatorial or Presidential election received 20 percent of the votes cast for its candidate or electors. 34 Ga. Code Ann., § 103(u).

9. Only political parties may hold primaries or conventions to nominate candidates for office. 34 Ga. Code Ann., §§ 1005 and 1012.

10. All other political bodies or organizations wishing to nominate candidates for office must circulate nominating petitions for them, according to 34 Ga. Code Ann., § 1010, which reads as follows:

> "34-1010. Nomination petitions.—(a) In addition to the party nominations made at primaries, nominations of candidates for public office may also be made by nomination petitions signed by electors and filed in the manner herein provided. Such petitions shall be in the form prescribed by the officers with whom they are filed, and no other forms than the ones so prescribed shall be used for such purposes.
>
> (b) A nomination petition of a candidate shall be signed by a number of electors of not less than five percent of the total number of electors eligible to vote in the last election for the filling of the office the candidate is seeking: except that in the case of a candidate seeking the office of judge of the superior

court or solicitor general the five per cent. figure shall be computed only on the total number of such electors of the judicial circuit directly involved.

(c) Each person signing a nomination petition shall declare therein that he is a duly qualified and registered elector of the State entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition, and shall add to his signature his residence address, giving municipality, if any, and county, with street and number, if any. No person shall sign the same petition more than once. Each petition shall support the candidacy of only a single candidate. A signature shall be stricken from the petition when the signer so requests prior to the presentation of the petition to the appropriate officer for filing, but such a request shall be disregarded if made after such presentation.

(d) A nomination petition shall be on one or more sheets of uniform size and different sheets must be used by signers resident in different counties. The upper portion of each sheet, prior to being signed by any petitioner, shall bear the name and title of the officer with whom the petition will be filed. the name of the candidate to be supported by the petition, his profession, business or occupation, if any, his place of residence with street and number, if any, his political party or body affiliation, if he is its nominee for the office he is seeking, and the name and date of the election in which the candidate is seeking election. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one nomination petition, and each sheet shall be numbered cinsecutively, beginning with number one, at the foot of each page. Each sheet shall bear on the bottom or back thereof the affidavit of the circulator of such sheets, setting forth: (i) that the affiant is a duly qualified and registered elector of the State entitled to vote in the next election for the filling of the office sought by

the candidate supported by the petition; (ii) his residence address, giving municipality with street and number, if any; (iii) that each signer manually signed his own name with full knowledge of the contents of the nomination petition; (iv) that each signature on such sheet was signed within 180 days of the last day on which such petition may be filed; and (v) that, to the best of affiant's knowledge and belief, the signers are registered electors of the State qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county named in the affidavit.

(e) No nomination petition shall be circulated prior to 180 days before the last day on which such petition may be filed, and no signature shall be counted unless it was signed within 180 days of the last day of filing the same.

(f) A nomination petition shall not be amended or supplemented after its presentation to the appropriate officer for filing.

(g) Any political party or body seeking to have the names of their candidates for the offices of presidential electors placed upon the ballot through nomination petitions shall not compile a separate petition for each candidate for such office, but such political party or body shall compile their petitions so that the entire slate of candidates of such party or body for such office shall be listed together on the same petition.

(Acts 1964, Extra. Sess., pp. 26, 93; 1965, pp. 349, 354; 1968, p. 257; 1968, pp. 871, 877.)"

Individuals desiring to run on their own, and not as party candidates must similarly circulate nominating petitions and file them with the Secretary of State.

11. Plaintiff GSWP desires to run candidates for the office of governor, and Congressmen from the Fourth and Fifth Congressional District in the November, 1970, elec-

tion. Plaintiff Jenness desires and intends to run for Governor and plaintiffs Cole and Grinnon desire and intend to run for Congress in the Fourth and Fifth Congressional Districts, respectively.

12. Plaintiffs Conner and Gwin desire to have the names of plaintiffs Jessess, Cole, and Grinnon on the ballot for the November, 1970, election in order that they might have the opportunity of voting for them, and that other members of their class might have the opportunity of considering a vote for them.

13. In order for a gubernatorial candidate to have his name on the November ballot, by nomination petition, he must obtain 5 percent of the signatures of voters registered for the 1966 election. 34 Ga. Code Ann., § 1010, *supra*. This means that he must obtain 88,175 signatures. Similarly, candidates for nomination by petition in the Fourth and Fifth Congressional Districts must obtain a total of 10,904 and 11,008 signatures, respectively.

14. Plaintiff GSWP and the individual plaintiffs lack the necessary financial, physical, and personnel resources to obtain the number of signatures required in the 180 days allowed. Nominating petitions must be filed no later than 45 days before the election upon which one seeks a place on the ballot, 34 Ga. Code Ann., § 1001(b)(c). The nominating petitions may not be circulated more than 180 days before the last date on which they may be filed. 34 Ga. Code Ann., § 1010(e). The 1970 General Election will be held on November 3, 1970; deadline for filing nominating petitions is September 18, 1970; and, nominating petitions may not be circulated before March 21, 1970.

15. The number of signatures required to be obtained for a non-political candidate to get on the ballot in the State of Georgia is so burdensome and oppressive as to be an invidious distinction between members of parties and members of other political organizations. As such it violates the right to equal protection of the laws, guaranteed by the Fourteenth Amendment, United States Constitution, of the GSWP, its candidates, and members. It additionally is an impermissibly heavy burden upon the rights of free speech, petition, and association of the

GSWP, its candidates and members. And, in violation of the First Amendment, United States Constitution, as such, it violates the right to vote of persons who desire either to vote for the GSWP and its candidates, or who desire to consider the GSWP and its candidates as alternatives on the ballot, in violation of the Fourteenth Amendment, United States Constitution.

COUNT TWO

16. Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 15, *supra.*

17. Under Georgia law, the Secretary of State is empowered to fix and publish a reasonable qualification fee for each candidate who files his notice of candidacy with him. 34 Ga. Code Ann., § 1004, which reads as follows:

> "Qualification fees.—The governing authority of any county, at least 90 days prior to the election in the case of a general election, and at least 20 days prior to the election in the case of a special election, shall fix and publish a reasonable qualification fee to be paid by candidates seeking election to any county or militia district office. Such fee shall be paid to the ordinary at the time a candidate files his notice of candidacy and the fee shall be promptly transmitted to the governing authority for application toward the payment of the cost of the cost of holding the election. Within the same time limitation, the Secretary of State shall fix and publish a reasonable qualification fee to be paid by each candidate filing his notice of candidacy with him. If the office sought by the candidate is filled by the vote of electors within a single county, the Secretary of State shall transmit such fee to the governing authority of such county for application toward the payment of the cost of holding the election. If the office sought by the candiadte is filled by the vote of electors of more than one county, then such fee shall be equally divided among the counties involved, and the Secretary of State shall transmit the proper portion of such fee to the governing authority of each such county

for application toward the payment of the cost of holding the election. No candidate nominated in a primary or in a convention held by his political party shall be required to pay such fee. (Acts 1964, Extra Sess., pp. 26, 91; pp. 329, 338.)

18. Plaintiffs Jenness, Colem and Grinnon are required to file notice of candidacy with the Secretary of State for the offices of Governor and Congressmen which they respectively seek.

19. The Secretary of State collects fees only from non-party candidates, as opposed to candidates of political organizations. 34 Ga. Code Ann. § 1004, *supra*.

20. In 1968, defendant Secretary of State set the qualifying fee for Congressman at $1,500.00.

21. In 1966, defendant Secretary of State set the qualifying fee for Governor at $2,500.

22. Neither plaintiffs nor the GSWP are able to afford the amounts set by the Secretary of State in the past, because of their relative poverty.

23. 34 Ga. Code Ann., § 1004, *supra*, is so vague that it violates the due process clause of the Fourteenth Amendment, United States Constitution, by allowing the Secretary of State to set whatever fees he wishes, subject only to the standard of "reasonableness." Said fees bear no relation to any governmental purpose, for candidates of group qualifying as parties do not have to forward anything to defray the cost of the election.

24. The amounts set by the Secretary of State in the past are so unreasonable, burdensome and oppressive that if they are applied again they will infringe upon the rights of speech, association, petition, and assembly of all the plaintiffs, in violation of the First Amendment, United States Constitution. Insofar as those amounts prevent GSWP candidates from having their named placed on the ballot, they are a restriction of the right to vote of plaintiffs Conner and Gwin and members of the class they represent, and an undue restriction on their freedom of speech and association, in violation of the First and Fourteenth Amendments, United States Constitution.

25. Insofar as 34 Ga. Code Ann., § 1004 applies to political organizations and their candidates but not to parties it is an invidious, unreasonable and burdensome discrimination in violation of the equal protection clause of Section 1 of the Fourteenth Amendment, United States Constitution.

EQUITY

26. Plaintiffs and members of the class represented by some of them have no plain or adeuate remedy at law, and the rights they assert can only be protected by this suit for declaratory and injunctive relief.

27. Plaintiffs are presently suffering immediate and irreparable injury for the reasons above alleged.

WHEREFORE, the plaintiffs pray that this Honorable Court:

a. Immediately notify the Honorable John Brown, Chief Judge of the Fifth Circuit, of this suit so that he may appoint a three judge court to hear the same;

b. Advance the case on the docket and give plaintiffs a hearing upon their request for preliminary injunction, filed herewith, and after such hearing, declare and decree that:

1. Sections 34-1010 and 34-1004, Ga. Code Ann., are unconstitutional on their face, null, void, and of no effect; or, in the alternative,

2. Declare and decree that 34-1004, Ga. Code Ann., is unconstitutional as applied in the past, in that the fees set by the Secretary of State violate the rights of poor people to seek office, to exercise First Amendment rights, and to vote;

c. Enjoin and restrain the operation, enforcement and execution of Sections 1004 and 1010, 34 Ga. Code Ann., as being unconstitutional, null, and void;

d. Enjoin and restrain the defendant from refusing to place the names of plaintiffs Jenness, Cole, and Grinnon on the 1970 ballot even though they have not submitted nominating petitions accompanied by 5% of the

signatures of the registered voters in the area over which their candidacies extend;

e. Enjoin and restrain the defendant from refusing to place the names of plaintiffs Jenness, Cole, and Grinnon on the 1970 ballot even though they have paid no qualifying fees;

f. Enjoin and restraining the defendant from setting any fees for any office which plaintiffs seek;

g. Grant such other relief as is meet in the circumstances, including an award of attorney's fees to plaintiffs.

/s/ Howard Moore, Jr.
/s/ Peter E. Rindskopf
1154 Citizens Trust Bank Bldg.
Atlanta, Georgia 30303
Attorneys for Plaintiffs

[*Duly sworn to by Clifford D. Conner jurat omitted in printing (all in italics)*]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13515

[File Endorsement Omitted]

[Title Omitted]

APPLICATION FOR THE CONVENING OF A THREE-JUDGE DISTRICT COURT—Filed January 18, 1970

Plaintiffs, upon their verified complaint heretofore filed, hereby make application for the hearing of this cause before a three-judge district court as required by 28 United States Code, Sections 2281 and 2284, and request that the Chief Judge of the Fifth Circuit Court of Appeals be notified pursuant to 28 United States Code, Section 2284, of the presentation of plaintiffs' application for the enjoining of a certain state statute in order that the necessary designation of judges for said court be made.

/s/ Howard Moore, Jr.
/s/ Peter E. Rindskopf
1154 Citizens Trust Bank Bldg.
Atlanta, Georgia 30303
Attorneys for Plaintiffs

MEMORANDUM IN SUPPORT OF APPLICATION FOR THE CONVENING OF A THREE-JUDGE FEDERAL COURT

The plaintiffs, by their complaint in the above-styled cause of action, seek injunctive relief against the enforcement and operation of §§ 1004 and 1010, 34 Georgia Code Annotated, statutes of state wide application. In their complaint, they have alleged substantial and real injury to themselves and to all others similarly situated. Such a claim is not frivolous or insubstantial. *Swift & Co.* v. *Wickham*, 382 U.S. 111 (1965). There have been no prior decisions of the Supreme Court showing that the claims raised are without merit. *Flamm* v. *Hughes*, 329 F.2d 378 (2nd Cir. 1964). On the contrary, High Court decisions would indicate that the questions raised are of pressing importance. Cf. *Williams* v. *Rhodes*, 383 U.S. 23. The relief sought is not such that ought to be granted by a single judge district court; and, arguably, the relief sought is relief that he could not give on his own. 28 United States Code, § 2281; *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U.S. 713 (1962).

Respectfully submitted,

/s/ Howard Moore, Jr.
/s/ Peter E. Rindskopf
1154 Citizens Trust Bank Bldg.
Atlanta, Georgia 30303
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13515

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR PRELIMINARY INJUNCTION—
Filed February 18, 1970

Plaintiffs, on the basis of the allegations of their verified complaint, move the Court for an order directing the defendant to show cause on a day certain why defendant should not be preliminarily enjoined and restrained from:

The enforcement, operation, or execution of §§ 1004 and 1010, 34 Georgia Code Annotated, on the grounds of unconstitutionality on their faces and as applied to deprive plaintiffs and the class represented by them of rights, privileges, and immunities guaranteed by the First and Fourteenth Amendments of the Constitution and laws of the United States, providing for the exercise of rights of speech, petition and association, and the right to vote.

Plaintiffs and the class which they represent are threatened with immediate and irreparable harm and injury, for which there is no plain and adequate remedy at law.

Dated: February 18, 1970.

Respectfully submitted,

/s/ Howard Moore, Jr.
/s/ Peter E. Rindskopf
1154 Citizens Trust Bank Bldg.
Atlanta, Georgia 30303
Attorneys for Plaintiffs

Brief in Support of Plaintiffs' Motion for Preliminary Injunction

1. This is a class action brought by the named plaintiffs and the Georgia Socialists Workers Party (hereinafter referred to as GSWP) Plaintiffs seek a preliminary and permanent injunction against the enforcement, operation, or execution of §§ 1004 and 1010, 34 Georgia Code. Since injunctive relief is sought on the grounds of the unconstitutionality of a Statute of State-wide application, this action requires the convening of a three-judge district court pursuant to the provisions of §§ 2281 and 2284, 28 United States Code. See separate memorandum in support of motion to convene a three-judge district court.

2. Plaintiffs allege the unconstitutionality of 34 Ga. Code Ann., § 1010, which provides for nominating petitions to be circulated by those who do not belong to a political party. The law requires that a petitioner for nomination secure signatures of 5% of the voters *registered* in the area which the office he seeks will cover. The law does not even require the signatures of voters who hace actually voted.

The requirement is clearly unreasonable, oppressive and burdensome. Its clear purpose is to prevent candidates other than those of the two major parties from appearing on the ballot. As such, it violates valuable First Amendment rights of the candidate plaintiffs, the GSWP, and the voter plaintiffs. The Supreme Court has considered a similar statute and agreed with plaintiffs' contentions. *Williams* v. *Rhodes*, 393 U.S. 23.

Important questions remain as to what relief this Court ought to give. Plaintiffs have filed their suit "early" in the election year so as not to be accused of laches or of unnecessary burdening the State with the success of their constitutional claim. But, it is vitally important that the Court hear this case as soon as possible to give all parties a fair chance to adjust to its decision.

3. Plaintiffs allege the unconstitutionality of 34 Ga. Code Ann., § 1004, which provides for the collection of fees by the Secretary of State from candidates who are not nominated at a primary by one of the State's existing political parties. Said statute allows the Secretary of

State to set "reasonable" fees without further to guide him in his determination. Plaintiffs allege that this provision is too vague to meet the due process requirements of the Fourteenth Amendment.

Plaintiffs further allege that defendant Secretary of State has applied 34 Ga. Code Ann., § 1004 in an unconstitutional manner in the past, setting fees of $2500 and $1500 for the offices of Governor and Congressman at the last elections for the respective positions. That the fees are unreasonable, oppressive, and burdensome may be seen from the fact that the Secretary collects from the persons nominated at the primaries of the established political parties. Thus, the sums collected from non-party candidates can hardily be said to play a real or major role in the defrayal of the cost of holding the elections or printing the ballots.[1]

A panel of this Court has already considered similar claims in regard to the fees charged for Atlanta's municipal electoral candidates. *Jenness* v. *Little*, Civil Action No. ———, on appeal *sub nom.*, *Matthews* v. *Little*, No. 1225 Misc., October Term, 1969 (United States Supreme Court). It should be remembered that as a result of that case, the City of Atlanta drastically reduced its fees.

4. The questions presented herein are substantial. *Williams* v. *Rhodes*, *supra*. An early ruling by the Court is vital to protect the First Amendment rights herein involved. Unless the Court rules otherwise, the 180 day period for the gathering of signatures on nominating petitions begins on March 20, 1970.

WHEREFORE, plaintiffs pray that they be granted a hearing and a preliminary injunction against the enforcement, operation, or execution of §§ 1004 and 1010, 34 Georgia Code Annotated.

/s/ Howard Moore, Jr.
/s/ Peter E. Rindskopf
1154 Citizens Trust Bank Bldg.
Atlanta, Georgia 30303
Attorneys for Plaintiffs

[1] Should the State so argue, plaintiffs would have a clear equal protection claim on this ground as well.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

No. 13515

[File Endorsement Omitted]

GEORGIA SOCIALIST WORKERS PARTY, ET AL

v.

BEN W. FORTSON, JR., Individually and as Secretary of State of the State of Georgia

(1) Requesting Judge:
Honorable NEWELL EDENFIELD
Northern District of Georgia

(2) District Judge:
Honorable ALBERT J. HENDERSON, JR.
Northern District of Georgia

(3) Circuit Judge:
Honorable GRIFFIN B. BELL

(4) Date of Order: March 9, 1970

ORDER DESIGNATING THREE-JUDGE COURT—
Filed March 11, 1970

The Requesting Judge (1) above named to whom an application for relief has been presented in the above cause having notified me that the action is one required by Act of Congress to be heard and determined by a District Court of three Judges, I, John R. Brown, Chief Judge of the Fifth Circuit, hereby designate the Circuit Judge (3) and District Judge (2) named above to serve with the Requesting Judge (1) as members of, and with him to constitute the said Court to hear and determine the action.

This designation and composition of the three-Judge court is not a prejudgment, express or implied, as to whether this is properly a case for a three-Judge rather

than a one-Judge court. This is a matter best determined by the three-Judge Court as this enables a simultaneous appeal to the Court of Appeals and to the Supreme Court without the delay, awkwardness, and administrative insufficiency of a proceeding by way of mandamus from either the Court of Appeals, the Supreme Court, or both, directed against the Chief Judge of the Circuit, the presiding District Judge, or both. The parties will be afforded the opportunity to brief and argue all such questions before the three-Judge panel either preliminarily or on the trial of the merits, or otherwise, as that Court thinks appropriate. See Jackson v. Choate, 5 Cir., 1968, 404 F.2d 910, Jackson v. Department of Public Welfare of the State of Florida, S.D. Fla., 1968, 296 F.Supp. 1341; City of Gainesville, Georgia v. Southern Railway Company, N.D. Ga., 1969, —— F.Supp. ——; Smith v. Ladner, S.D. Miss., 1966, 260 F.Supp. 918; Hargrave v. McKinney, M.D. Fla., 1969, 302 F.2d 1381; Langford v. Barlow [No. 26770], 5 Cir., 1969, 417 F.2d 628, Langford v. Barlow, W.D. Tex., 1969, 304 F.Supp. 657;

/s/ John R. Brown
Chief Judge
Fifth Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13515

[File Endorsement Omitted]

[Title Omitted]

ORDER EXTENDING TIME—Filed March 13, 1970

On motion of the Defendant, Ben W. Fortson, Jr., the time for filing any response whatsoever to Plaintiffs' complaint is hereby extended up to and including the 30th day of March, 1970.

So ordered this 13th day of March, 1970.

/s/ Newell Edenfield
Judge
United States District Court,
Northern District of Georgia

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13515

[File Endorsement Omitted]

[Title Omitted]

DEFENDANT'S ANSWER WITH EXHIBIT "A"—
Filed March 30, 1970

First Defense

Plaintiffs had notice of all the facts and law and of all the acts of the defendant set forth in the complaint and nevertheless refrained from commencing this action until February 18, 1970. Plaintiffs are thereby guilty of such laches as in equity should bar them from maintaining this action.

Second Defense

This Court lacks jurisdiction over the subject matter of the complaint because the plaintiffs do not raise a substantial federal question.

Third Defense

The complaint fails to state a claim against the defendant upon which relief can be granted.

Fourth Defense

1.

Defendant denies the allegations of paragraph 1 of the complaint.

2.

Defendant denies the allegations of paragraph 2 of the complaint.

3.

Defendant admits the allegations of paragraph 3 of the complaint.

4.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the complaint.

5.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the complaint.

6a.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6(a) of the complaint.

6b.

Defendant denies the allegations of paragraph 6(b) of the complaint.

7.

Defendant admits the allegations of paragraph 7 of the complaint.

Count One

8.

Defendant admits the allegations of paragraph 8 of the complaint.

9.

Defendant denies the allegations of paragraph 9 of the complaint.

10.

Defendant answers paragraph 10 of the complaint by showing that on March 20, 1970, the Governor of the State of Georgia approved House Bill No. 1304, which technically amended present Ga. Code § 34-1010, although no substantial change in the Code section was made. A

copy of House Bill No. 1304 is attached to this answer and marked "Exhibit A".

11.

Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the complaint.

12.

Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the complaint.

13.

Defendant admits, for the purposes of this lawsuit, the allegations of paragraph 13 of the complaint.

14.

Defendant admits the allegations of the third sentence of paragraph 14 of the complaint which alleges that nominating petitions may not be circulated more than 180 days before the last date on which they may be filed and defendant also admits that the 1970 General Election will be held on November 3, 1970. The defendant denies the remainder of the allegations of paragraph 14 of the complaint.

15.

Defendant denies the allegations of paragraph 15 of the complaint.

Count Two

16.

Defendant answers paragraph 16 of the complaint by realleging his answers to paragraphs 1 thru 15 of the complaint.

17.

Defendant answers paragraph 17 of the complaint by showing that on March 20, 1970, the Governor approved

House Bill No. 1304 (attached as "Exhibit A") which repealed the Code section set out in paragraph 17 of the complaint and replaced that Code section with a new Code section, Ga. Code § 34-1013, located on page 27 of the Bill.

18.

Defendant admits the allegations of paragraph 18 of the complaint.

19.

The defendant answers paragraph 19 of the complaint by showing that the Code section alleged by the plaintiffs has been repealed in its entirety and replaced with a new Code section, Ga. Code § 34-1013 which is located on page 27 of the attached Exhibit A.

20

Defendant admits the allegations of paragraph 20 of the complaint.

21.

Defendant admits the allegations of paragraph 21 of the complaint.

22.

Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the complaint.

23.

Defendant denies the allegations of paragraph 23 of the complaint.

24.

Defendant denies the allegations of paragraph 24 of the complaint.

25.

Defendant denies the allegations of paragraph 25 of the complaint.

Equity

26.

Defendant denies the allegations of paragraph 26 of the complaint.

27.

Defendant denies the allegations of paragraph 27 of the complaint.

/s/ Arthur K. Bolton
Attorney General

/s/ Harold N. Hill, Jr.
Executive Assistant Attorney General

/s/ Robert J. Castellani
Assistant Attorney General
Attorneys for Defendant

Please address all correspondence to:

ROBERT J. CASTELLANI
State Judicial Building
40 Capitol Square, S. W.
Atlanta, Georgia 30334

EXHIBIT "A" TO DEFENDANT'S ANSWER

H. B. No. 1304 (COMM. SUB) (AM)
By Messrs. Howell of the 60th, Lambert of the 25th and Parker of the 46th

A BILL
TO BE ENTITLED

An Act to amend Title 34 of the Code of Georgia, relating to elections, as amended, so as to place the conduct of primaries under the supervision of the ordinaries; to provide for the payment of the costs of primaries; to provide for the assessment, publication, payment, disposition and allocation of qualifying fees required of candidates in primaries and elections; to provide that the Secretary of State certify candidates to ordinaries in primaries; to provide that the Secretary of State furnish all forms needed for primaries and elections except ballots and ballot labels; to provide that returns of primaries be made to the Secretary of State and preserved by him at least a year; to provide that the ordinary procure ballots and supplies, appoint poll officers, make rules and regulations, instruct poll officers, receive, compute, and convass returns, announce results, and file returns of primaries; to provide that the ordinary may be relieved of responsibility for conducting the primary or election if he is a candidate; to provide that political parties may submit lists of qualified election workers to the superintendent and that the superintendent shall insofar as practicable make appointments so as to provide equal representation for political parties in primaries and elections; to remove rule making power over primaries from committees of political parties; to remove supersedure power of state party executive committees over county executive committees in relation to conduct of primary, and to give such supersedure power to state committees relative to all other party matters; to provide the methods of qualifying for party primaries and for general elections; to provide that nominations of political parties for all public offices except substitute nominations or office of presidential elector shall be made in the primary preceding the general election in which candidates run; to provide that

the ordinary shall conduct the primary in the same manner and according to the provisions of the Code relating to general elections; to provide for certification of political party candidates to the ordinary or Secretary of State and for disposition of fees paid by such candidates; to provide that political body candidates qualifying by petition must also be nominated by political body convention; to provide that all other petition candidates be listed on ballot in the independent column; to provide that political parties may nominate presidential electors by convention; to provide the form for absentee ballots; to provide that the office of board of registrars remain open during the entire duration of the primary or election; to provide for the disposition of consolidated returns of primaries and elections; to provide for certificates of election, commissions of election, and proclamations of results of constitutional amendments; to provide all of the necessary procedures connected with the foregoing; to provide for the effective date of this Act; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Title 34 of the Code of Georgia, relating to elections, as amended, is hereby amended by striking in its entirety subsection (ac) of Section 34-103, relating to the definition of certain terms, and substituting in lieu thereof the following:

"(ac) The word 'superintendent' shall mean the ordinary of a country;".

Section 2. Said Title is further amended by striking subsection (d), (e) and (f) of Section 34-301, relating to the powers and duties of the Secretary of State, and substituting in lieu thereof the following:

"(d) To certify to the proper ordinaries official lists of all the political party candidates who have been certified to the Secretary of State as qualified candidates for the succeeding primary, and to certify

to the proper ordinaries official lists of all the candidates who have filed their notices of candidacy with him, both such certifications to be in substantially the form of the ballots to be used in the primary or election. The Secretary of State shall add to such form the language to be used in submitting any proposed constitutional amendment or other question to be voted upon at such election;

(e) To furish to the proper ordinaries all blank forms, including tally and return sheets, numbered lists of voters, cards of instructions, notices of penalties, instructions for marking ballots, tally sheets, district returns, consolidated returns, oaths of managers and clerks, oaths of assisted electors, voters certificates and binders, applications for absentee ballots, envelopes and instructions sheets for absentee ballots, and such other supplies as he shall deem necessary and advisable from time to time, for use in all elections and primaries. Such forms shall have printed thereon appropriate instructions for their use;

(f) To receive from the ordinaries the returns of primaries and elections, to canvass and compute the votes cast for candidates and upon questions as required by the provisions of this Code;".

Section 3. Said Title is further amended by inserting between the words "All" and "election", as they appear in Code Section 34-303, relating to the preservation of records, the following:

"primary and".

Section 4. Said Title is further amended by striking from Code Section 34-401, relating to powers and duties of ordinaries, subsections (e), (f), (g), (h), (i) and (j) and substituting in lieu thereof the following:

"(e) To purchase, except voting machines and voting recorders, preserve, store and maintain election equipment of all kinds, including voting booths and ballot boxes, and to procure ballots and all other supplies for primaries and elections;

(f) To appoint poll officers and other officers to serve in primaries and elections in accordance with the provisions of this Code;

(g) To make and issue such rules, regulations and instructions, consistent with law (including the rules and regulations promulgated by the State Election Board), as he may deem necessary for the guidance of poll officers, custodians and electors in primaries and elections;

(h) To instruct poll officers and others in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of his county to the end that primaries and elections may be honestly, efficiently and uniformly conducted;

(i) To receive from poll officers the returns of all primaries and elections, to canvass and compute the same, and to certify as soon as practicable following the primary and election the results thereof to such authorities as may be prescribed by law;

(j) To publicly announce by posting in his office the results of all primaries and elections held in his county;".

Section 5. Said Title is further amended by inserting between the words "of" and "elections", wherever they shall appear, in Code Section 34-402, relating to the payment of the expenses incurred by ordinaries, the words "primaries and" and by inserting between the words "other" and "elections" the words "primaries and".

Section 6. Said Title is further amended by inserting in Code Section 34-403, relating to the public inspection of certain records, between the words "the" and "election" the following:

"primary and".

Section 7. Said Title is further amended by inserting in Code Section 34-404, relating to the preservation of records, between the words "All" and "election" the following:

"primary and".

Section 8. Said Title is further amended by adding at the end of Code Chapter 34-4, relating to ordinaries, a new Code Section 34-405 and to read as follows:

"Section 34-405. In the event an ordinary is a candidate with opposition for any public office in a primary or election, he shall, within seven days after the date for the closing of qualifications for the particular primary or election, request the State Election Board to appoint a substitute superintendent to serve in his place in said primary or election. Upon receiving such a request from any ordinary, in consultation with the political parties or bodies and independent candidates involved in such an election or primary, the State Election Board shall appoint a qualified individual to act as the superintendent in such primary or election. The State Election Board, in selecting the substitute superintendent, shall give first consideration to the qualified electors of the county involved."

Section 9. Said Title is further amended by striking in its entirety Code Section 34-501, relating to managers of election districts, and substituting in lieu thereof the following:

"Section 34-501. Managers. All elections and primaries shall be conducted in each election district by a board consisting of a chief manager, who shall be chairman of such board, and two assistant managers, assisted by clerks, as hereinafter provided. The managers of each election district shall be appointed by the superintendent. If the political parties involved elect to do so, they may submit to the superintendent for his consideration in making such appointment, a list of qualified persons. When such lists are submitted to him, the superintendent, insofar as practicable, shall make his appointments so that there shall be equal representation on such boards for the political parties involved in such elections or primaries. The superintendent shall make each appointment by entering an order which shall remain of record in his office, and shall transmit a copy of such order to the

appointee. The order shall include the name and address of the appointee, his title, and a designation of the election district and primary or election in which he is to serve."

Section 10. Said Title is further amended by striking from subsections (b) and (c) of Code Section 34-902, relating to the rules and regulations of political parties, the following:

"primaries,".

Section 11. Said Title is further amended by striking in its entirety Code Section 34-903, relating to the supersedure power of State executive committees, and substituting in lieu thereof the following:

"Section 34-903. *Supersedure power of State executive committee; notice; hearing; order.*—(a) When the State executive committee of a political party has reason to believe that the orders, rules or regulations of the State executive committee, relating to all party matters *except the conduct of primaries*, are not being, or will not be, fairly, impartially or properly enforced or applied in any county, by the county executive committee of the party in such county, then the State executive committee shall issue to such county committee a written notice of opportunity for hearing.

(b) A notice of opportunity for hearing shall state the substance of the order which the State committee proposes to issue under subsection (e) hereof and advise such county committee of its right to a hearing upon request to the State committee if such request is received by its within the time specified in the notice.

(c) Whenever such county committee requests a hearing in accordance with the provisions of this Section, the State committee shall immediately set a date, time and place for such hearing and shall forthwith notify the county committee thereof.

(d) A stenographic record of the testimony and other evidence submitted at the hearing shall be

taken and filed with the State committee. Each witness appearing at the hearing shall be sworn prior to testifying.

(e) If the State committee does not receive a timely request for hearing, or if a hearing is requested and conducted as provided in this Section and the State committee determines that all or any part of the proposed relief described in the notice of opportunity for hearing should be granted, then the State committe may issue an order, effective for a certain period: suspending and superseding all or any part of the powers and duties of the county committee and directing that the powers and duties which would have been exercised and performed by such county executive committee in those matters in which they have been suspended and superseded, shall be exercised and performed by the persons designated by the State executive committee, who may be residents of any county of this State, notwithstanding any other provisions of this Code.

(f) The State executive committee may delegate its powers under the provisions of this Section to a subcommittee."

Section 12. Said Title is further amended by deleting in its entirety Code Section 34-904, relating to the investigation of fraud and irregularities by State executive committees in primaries.

Section 13. Said Title is further amended by striking in its entirety Chapter 34-10, relating to the election of candidates, as amended, and substituting in lieu thereof a new Chapter 34-10, to read as follows:

"CHAPTER 34-10. NOMINATION OF CANDIDATES

A. General Election

Section 34-1001. *Qualification of Candidates.*— Candidates may qualify for an election as hereinafter prescribed by virtue of (1) nomination in a primary conducted by a political party; (2) filing a nomination petition either as an independent candidate or as a nominee of a political body, if duly

certified by the chairman and the secretary of the political body as having been nominated in a duly constituted political body convention as prescribed in Section 34-1011; (3) nomination of presidential electors as prescribed by rules of political party; (4) substitute nomination of a political party or body as prescribed in Section 34-1003; (5) candidate in a special election as prescribed in Section 34-1002(c); or, (6) incumbent qualifying as a candidate to succeed himself as prescribed in Section 34-1002(c).

Section 34-1002. *Filing Notice of Candidacy.*— (a) Only those candidates who have filed their notice of candidacy in the following manner and have paid the prescribed qualifying fee by the date hereinafter prescribed shall be eligible to have their names placed on the general election ballot by the ordinaries of the counties or the county election boards.

(b) Each candidate for federal or state office, or his agent, desiring to have his name placed on the ballots, shall file notice of his candidacy, giving his name, residence address and the office he is seeking in the office of the Secretary of State at least forty-five days prior to the election in the case of a general election and at least fifteen days prior to the election in the case of a special election; except, that such filing shall not apply to a candidate for a militia district office (justice of the peace). Each candidate for a county or militia district office, or his agent, desiring to have his name placed on the ballots, shall file notice of his candidacy in the office of the ordinary of his county at least forty-five days prior to the election in the case of a general election and at least fifteen days prior to the election in the case of a special election. If a runoff primary is held, each candidate nominated therein, or his agent, shall file notice of his candidacy with the appropriate officer within five days after the holding of such primary, irrespective of such five day period exceeding a qualification deadline hereinabove prescribed. Any candidate required to accompany his notice of candidacy with a nomination petition as hereinafter prescribed

shall file his notice no later than 12:00 noon on the second Wednesday in June immediately prior to the election.

(c) Each candidate shall accompany his notice of candidacy with a nominating petition in the form hereafter prescribed; except that such petition shall not be required if such candidate is: (i) a nominee of a political party for the office of presidential elector when such party has held a national convention and therein nominated candidates for President and Vice President of the United States; (ii) a nominee of a political party nominated in a primary; (iii) seeking office in a special election; or, (iv) an incumbent qualifying as a candidate to succeed himself if, prior to the election at which he was originally elected to the office for which he seeks re-election, such incumbent accompanied his notice of candidacy with a nomination petition.

(d) Each candidate described in Subsection (b) shall accompany his notice of candidacy with an affidavit stating: (i) his residence, with street and number, if any, and his post office address; (ii) his profession, business or occupation, if any; (iii) the name of his election district; (iv) that he is an elector of the county of his residence eligible to vote in the election in which he is a candidate; (v) the name of the office he is seeking; (vi) that he is eligible to hold such office; and (vii) that he will not knowing violate any provisions of this Code or of rules and regulations adopted thereunder. The affidavit shall contain such other information as may be prescribed by the officer with whom the candidate files his notice of candidacy.

Section 34-1003. *Substituted nominations by parties and bodies.*—Any vacancy happening in any party nomination (filled by primary) for a public public office to be filled by the vote of the electors of more than one county, by reason of the death, disqualification or withdrawal of any candidate therefor, occurring after nomination but at least ten days prior to the election to fill the public office sought by

such candidate, may be filled by a substituted nomination made by a convention composed of the delegates of the county executive committee of such party in each county in which electors reside who are elegible to vote for the filling of such public office. Immediately upon such vacancy occurring, the State executive committee, or a subcommittee thereof appointed for the purpose, shall fix a time within six days of the happening of such vacancy and shall select and provide a convenient place for the holding of such a convention, which shall be open to the public, and shall give notice thereof to the chairman and secretary of each county executive committee entitled to participate in the convention. Each county executive committee shall be entitled to select the number of delegates apportioned to it by the State executive committee; provided, however, that each county executive committee shall be entitled to select at least one delegate. Such apportionment of delegates among the counties shall be based substantially upon the population of the area involved in the convention according to the last United States Decenial Census, or upon the number of votes cast within such area for the party's candidates for presidential electors in the last presidential election. A two-thirds majority of the delegates of such county executive committees shall constitute a quorum for the transaction of business, and a majority of the delegates present while a quorum exists shall be sufficient to fill such nomination by a substituted nomination. Each delegate shall have one vote and all votes taken shall be by a roll call vote. The records of the convention shall be filed with the State executive committee. In the event such a vacancy in party nomination shall happen during the ten days preceding the day of such an election or on the morning of such an election prior to the opening of the polls, such vacancy may be filled by a substituted nomination made by the State executive committee or a subcommitttee thereof appointed for the purpose.

(b) Any vacancy happening in any party nomina-

tion (filled by primary) for a Federal, State or county office filled by the vote of electors within a single county, or for the office of judge of the superior court or solicitor general of a judicial circuit contained within a single county, by reason of the death or withdrawal of any candidate therefor occurring after nomination, may be filled by a substituted nomination made by the county executive committee of the party in such county.

(c) Any vacancy happening in any party nomination (filled by means other than by primary) or body nomination, by reason of the death, disqualification or withdrawal of any candidate after nomination, may be filled by a substituted nomination made by such committee as is authorized by the rules and regulations of the party or body to make nominations in the event of vacancies on the party or body ticket.

(d) Upon the making of any such substituted nomination, in the manner prescribed in this Section, it shall be the duty of the chairman and secretary of the convention or committee making the nomination to file with the Secretary of State or with the ordinary, as the case may be, a nomination certificate which shall be signed by such chairman and secretary. Every such certificate of nomination shall be sworn to by the chairman and secretary before an officer qualified to administer oaths.

B. Nomination of Party Candidates by Primaries

Section 34-1004. *Primaries to be conducted only by political parties; conduct of primaries.*—Only a political party may elect its officials and nominate its candidates for public office in a primary. Except for substitute nominations as provided in Section 34-1003 and nomination of presidential electors, all nominees of a political party must be nominated in the primary preceeding the general election in which the candidates names will be listed on the ballot. The primary held for such purpose shall be conducted by the ordinary in the same manner as prescribed by law and rules and regulations of the State Election

Board and the ordinary for general elections. Primaries of all parties shall be conducted jointly.

Section 34-1005. *Qualification of candidates; time for opening and closing qualifications; posting of lists of candidates by political parties; certification of political party candidates to ordinary and Secretary of State.*—(a) Unless otherwise provided by law, all candidates for party nomination in a primary shall qualify as such candidates in accordance with the procedural rules of their party; provided, however, that no person shall be prohibited from qualifying for such office who meets the requirements of such procedural rules and (i) who is eligible to hold the office which he seeks, (ii) who is not prohibited from being nominated or elected by provisions of Code Section 34-106 or 34-107, as presently written or hereafter amended, and (iii) who, if party rules so require, affirms his allegiance to his party by signing the following oath:

'I do hereby swear or affirm my allegiance to the ..... (name of party) Party.'

(b) In the case of a general primary, the candidates shall commence qualifying not earlier than 135 days prior to the date of such primary and not later than the last Wednesday in May. All parties shall close their qualifications at 12:00 noon on the second Wednesday in June immediately preceding such primary. In the case of a special primary, the candidates shall qualify at least 15 days prior to the date of such primary.

(c) Within one hour after the qualifications have ceased, the county executive committee of each political party shall post at the county courthouse a list of all candidates who have qualified with such executive committee, and the State executive committee of each political party shall post a list of all candidates who have qualified with such committee at the courthouse of the county in which such executive committee's office is located.

Section 34-1006. *Certification of political party candidates to Ordinary or Secretary of States.*—At, or before noon, on the third Wednesday in June, the county executive committee of each political party shall certify to the Ordinary, and the State executive committee of each political party shall certify to the Secretary of State, on forms prescribed by the Secretary of State, all those candidates who have qualified with such committee for the succeeding general primary election. Such certification shall be accompanied by three-fourths of the qualifying fees paid by such candidates as prescribed in Section 34-1012. Such certification shall not be accepted if the political party has not registered with the Secretary of State as required in Chapter 34-9.

Section 34-1007. *Reopening of qualification in event of death of candidate.*—In the event of the death of a candidate prior to the date of a primary, the State executive committee or other committee of the party authorized by party rule, may reopen qualification for the office sought by the deceased candidate for a period of not less than one, nor more than three days.

Section 34-1008. *Conduct of primary; Polling places and poll officers to be used.*—Primaries shall be held and conducted in all respects in accordance with the provisions of this Code relating to general elections and the provisions of this Code relating to general elections shall apply thereto, insofar as practicable, and not inconsistent with any other provisions of this Code. All such primaries shall be conducted in each election district by the poll officers, by the use of the same equipment and facilities, so far as practicable, as are used for such general elections.

Section 34-1009. *Primary expenses.*—The expenses of a primary shall be paid by the respective county, except that forms listed under Section 34-301 (e) shall be furnished upon request by the Secretary of State.

C. Nomination of Candidates by Petition

Section 34-1010. *Nomination petitions.* (a) Nominations of candidates for public office may be made by nomination petitions signed by electors and filed in the manner herein provided. Such petitions shall be in the form prescribed by the officers with whom they are filed, and no other forms than the ones so prescribed shall be used for such purposes.

(b) A nomination petition of a candidate shall be signed by a number of electors of not less than five percent of the total number of electors eligible to vote in the last election for the filling of the office the candidate is seeking; except that in the case of a candidate seeking the office of judge of the superior court or solicitor general the five percent figure shall be computed only on the total number of such electors of the judicial circuit directly involved.

(c) Each person signing a nomination petition shall declare therein that he is a duly qualified and registered elector of the State entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition, and shall add to his signature his residence address, giving municipality, if any, and county, with street and number, if any. No person shall sign the same petition more than once. Each petition shall support the candidacy of only a single candidate, except, any political body seeking to have the names of their candidates for the offices of presidential electors placed upon the ballot through nomination petitions shall not compile a separate petition for each candidate for such office, but such political body shall compile their petitions so that the entire slate of candidates of such body for such office shall be listed together on the same petition. A signature shall be stricken from the petition when the signer so requests prior to the presentation of the petition to the appropriate officer for filing, but such a request shall be disregarded if made after such presentation.

(d) A nomination petition shall be on one or more sheets of uniform size and different sheets must be

used by signers resident in different counties. The upper portion of each sheet, prior to being signed by any petitioner, shall bear the name and title of the officer with whom the petition will be filed, the name of the candidate to be supported by the petition, his profession, business or occupation, if any, his place of residence with street and number, if any, the name of the office he is seeking, his political body affiliation, if any, and the name and date of the election in which the candidate is seeking election. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one nomination petition, and each sheet shall be numbered consecutively, beginning with number one at the foot of each page. Each sheet shall bear on the bottom or back thereof the affidavit of the circulator of such sheet, setting forth: (i) that the affiant is a duly qualified and registered elector of the State entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition; (ii) his residence address, giving municipality with street and number, if any; (iii) that each signer manually signed his own name with full knowledge of the contents of the nomination petition; (iv) that each signature on such sheet was signed within one hundred and eighty days of the last day on which such petition may be filed; and, (v) that, to the best of the affiant's knowledge and belief, the signers are registered electors of the State qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county named in the affidavit.

(e) No nomination petition shall be circulated prior to one hundred and eighty days before the last day on which such petition may be filed, and no signature shall be counted unless it was signed within one hundred and eighty days of the last day for filing the same.

(f) A nomination petition shall not be amended or supplemented after its presentation to the appropriate officer for filing.

(g) Only those candidates whose petitions are accompanied by a certificate sworn to by the chairman and secretary of a political body, (duly registered with the Secretary of State as required by Section 34-901) stating that the named candidate is the nominee of that political body by virtue of being nominated in a convention, as prescribed in Section 34-1012, shall be listed on the ballot under the name of the political body. All petition candidates not so designated as the nominee of a political body shall be listed on the ballot in the independent column.

Section 34-1011. *Examination of nomination petitions; judicial review.*—(a) When any nomination petition is presented in the office of the Secretary of State or of any ordinary for filing within the period limited by this Code, it shall be the duty of such officer to examine the same to the extent necessary to determine if it complies with the law. No nomination petition shall be permitted to be filed if: (i) it contains material errors or defects apparent on the face thereof; (ii) it contains material alterations made after signing without the consent of the signers; or (iii) it does not contain a sufficient number of signatures as required by law. The Secretary of State or any ordinary may question the genuineness of any signature appearing on a petition or the qualification of any signer whose signature appears thereon, and if he shall thereupon find that any such signature is improper, such signature shall be disregarded in determining whether the petition contains a sufficient number of signatures as required by law. The invalidity of any sheet of a nomination petition shall not affect the validity of such petition if a sufficient petition remains after eliminating such invalid sheet.

(b) Upon the filing of a nomination petition, the officer with whom it is filed shall begin expeditiously to examine the petition to determine if it complies with the law. During such examination the officer shall have the right to summon by subpoena on two days' notice and interrogate under oath the candidate

named in the petition, any person who signed the petition, any person who executed or witnessed any affidavit or certificate accompanying the petition, or any other person who may have knowledge of any matter relevant to the examination. Such officer shall also have the right to subpoena on two days' notice any record relevant to the examination. No witness shall be compelled to attend if he should reside more than one hundred miles from the place of hearing by the nearest practical route, provided, however, that the officer may compel the taking of his testimony by deposition in the county of the residence of the witness. The sheriff of any county, or his deputy, or agent of the officer, shall serve all processes issued by the officer, or the same may be served by United States registered or certified mail and the production of an appropriate return receipt issued by the United States Post Office shall constitute prima facie evidence of such service. In case of the refusal of any person subpoenaed to attend or testify, such fact shall be reported forthwith by the officer to the appropriate superior court, or to a judge theerof, and such court or judge shall order such witness to attend and testify, and, on failure or refusal to obey such order, such witness shall be dealt with as for contempt. Any witness so subpoenaed, and after attending, shall be allowed and paid the same mileage and fee as now allowed and paid witnesses in civil actions in the superior court. The officer shall not be bound by technical rules of evidence in hearing such testimony. The testimony presented shall be stenographically recorded and made a part of the record of the examination. If the petition complies with the law, it shall be granted and the candidate named therein shall be notified in writing. If the petition fails to comply with the law, it shall be denied and the candidate named therein shall be notified of the cause for such denial by letter directed to his last known address. In neither case shall the petition be returned to the candidate.

(c) The decision of the officer denying a nomination petition may be reviewed by the superior court of the county containing the office of such officer upon an application for a writ of mandamus to compel the granting of such petition. The application for such writ of mandamus shall be made within five days of the time when the petitioner is notified of such decision. Upon the application being made, a judge of such court shall fix a time and place for hearing the matter in dispute as soon as practicable, and notice thereof shall be served with a copy of such application upon the officer with whom the nomination petition was filed and upon the petitioner. At the time so fixed the court, or any judge thereof assigned for the purpose, shall hear the case. If after such hearing the said court shall find that the decision of the officer was erroneous, it shall issue its mandate to the officer to correct his decision, and to grant the nomination petition. From any decision of the superior court an appeal may be taken within five days after the entry thereof to the Supreme Court. It shall be the duty of the Supreme Court to fix the hearing and to announce its decision within such period of time as will permit the name of the candidate affected by the court's decision to be printed on the ballot, if the court should so determine.

D. Nomination of Candidates by Convention

Section 34-1012. *Nomination of candidates by convention.* (a) Any political party desiring to nominate its presidential electors, and any political body desiring to nominate its candidates qualifying with petitions by convention shall, through its State Executive Committee, adopt rules and regulations in conformity with this Section governing the holding of such conventions for the nomination of candidates for any State, district or county office. Such rules and regulations shall be filed with the Secretary of State, and no amendment to such rules and regulations shall be effective unless filed with the Secretary State at least 30 days prior to the date of such con-

vention. The State Party or Body Chairman of such political party or body and its Secretary shall accompany the filing of such rules and regulations with their certificate certifying that the rules and regulalations therein filed are a true and correct copy of the rules and regulations of the party pertaining to the nomination of candidates by the convention method.

(b) The Secretary of State shall examine all such rules and regulations, and all amendments thereto, as shall be filed with him within 15 days after receipt theerof. If, in the opinion of the Secretary of State, any rule or regulation, or any part thereof, does not meet the requirements prescribed by this Section, he shall notify the State Party or Body Chairman and Secretary of such party or body in writing, stating therein his reasons for rejecting such rule or regulation. If, in the judgment of the Secretary of State, such rules and regulations meet the requirements prescribed by this Section, they shall be approved.

(c) The Secretary of State shall not approve any such rules or regulations unless they provide:

(1) That a notice of the proposed date for the holding of any such convention must be published in a newspaper having a general circulation within the area to be affected at least 10 days prior to the date of any such convention. Such notice shall also state the purpose for which the convention has been called; and

(2) That delegates to the convention shall be certified pursuant to appropriate party or body rules by the proper party or body officials; and

(3) That delegates to the convention shall be apportioned in such manner as will properly reflect the number of electors residing within the political subdivisions or area affected in accordance with the last United States decennial census; or apportioned according to the number of votes received by the party's candidate for

the office of President of the United States in the last presidential election in the areas concerned; or apportioned according to the number of votes received by the party's candidate for the office of Governor of Georgia in the last gubernatorial election in the areas concerned; and

(4) In the event that more than one county is involved, each county shall have at least one delegate to the convention, and such additional delegates as shall be allotted thereto shall be apportioned according to the provisions of (3) above; and

(5) That a certified copy of the minutes of the convention, attested to by the Chairman and Secretary of the convention, must be filed by the nominee with his notice of candidacy.

(d) Any candidate nominated by convention shall be required to pay to the person with whom he files his notice of candidacy the same qualifying fees as that required of other candidates for the same office.

(e) A convention for the purpose of nominating candidates shall be held at least 90 days prior to the date on which primaries are conducted.

(f) Nothing contained within this Section shall be construed so as to apply to the nomination of substitute candidates by convention pursuant to the provision of Code Section 34-1003 or to the nomination of candidates in special elections.

E. General Provisions

Section 34-1013. *Qualification fees; when and to whom paid; distribution of fees.*—(a) Qualification fees for party and public offices shall be fixed and published as follows: (1) The governing authority of any county, not later than March 1 in any year in which a general primary or election is to be held (except that in the year 1970 such date shall be April 1), and at least twenty days prior to the election in the case of a special election, shall fix and publish a

qualifying fee for each county or militia district office to be filled in the upcoming primary or election. Such fee shall be five percent of the annual salary of the office if a salaried office. If not a salaried office, a reasonable fee shall be set by the county governing authority, such fee not to exceed five percent of the income derived from such office by the person holding the office for the preceding year, except that the fee for the office of Justice of the Peace shall be $10.00.

(2) Within the same time limitation, the Secretary of State shall fix and publish a qualifying fee to be paid by each candidate qualifying for a primary with a state political party and each non-primary candidate filing with the Secretary of State his notice of candidacy for the general or special election. Such fee shall be five percent of the annual salary of the office if a salaried office, except that the fee for members of the General Assembly shall be $400.00. If not a salaried office, a reasonable fee shall be set by the Secretary of State, such fee not to exceed five percent of the income derived from such office by the person holding the office for the preceding year.

(3) A reasonable qualifying fee may be set according to party rule for each party office to be filed in a primary. Such fees shall be set and published by the county or state political party not later than March 1 of the year in which the primary is to be held for the filling of such party office (except that in the year 1970 the date shall be April 1).

(b) Qualifying fees shall be paid as follows:

(1) The qualifying fee for a candidate in a primary shall be paid to the county or state political party at the time the candidate qualifies;

(2) The qualifying fee for all other candidates shall be paid to the Ordinary or Secretary of State at the time the notice of candidacy is filed by the candidate.

(c) Qualifying fees shall be pro-rated and distributed as follows:

(1) Fees paid to the county political party: 25% to be retained by the county political party with which the candidate qualified; 75% to be transmitted to the Ordinary of the county with the party's certified list of candidates not later than noon of the third Wednesday in June in the case of a general primary, and by noon of the day following the closing of qualifications in the case of a special primary. Such fees shall be transmitted as soon as practicable by the Ordinary to the governing authority of the county, to be applied toward the cost of the primary and election.

(2) Fees paid to the state political party: 25% to be retained by the state political party; 75% to be transmitted to the Secretary of State with the party's certified list of candidates not later than noon of the third Wednesday in June in the case of a general primary, and by noon of the day following the closing of qualifications in the case of a special primary. Such fees shall be transmitted as soon as practicable by the Secretary of State as follows: one-third to the State Treasury, and two-thirds to the governing authority of the county or counties in the district in which the candidate runs, such fees to be applied toward the cost of holding the primary and election. If the office sought by the candidate is filled by the vote of electors of more than one county, then such fee shall be divided among the counties involved in proportion to the vote cast by each county in the preceding presidential election.

(3) Qualification fees paid to the Ordinary of the county shall be transmitted by the Ordinary as soon as practicable to the general fund of the governing authority of the county, to be applied toward the cost of holding the election.

(4) Qualification fees paid to the Secretary of State shall be pro-rated and distributed as follows: 25% to be transmitted to the State Treasury; 75% to be transmitted to the governing authority of the county or counties in the district in which the candidate runs, such fees to be applied toward the payment of the cost of holding the election. If the office sought by the candidate is filled by the vote of electors of more than one county, then such fee shall be divided among the counties involved in proportion to the vote cast by each county in the preceding presidential election.

Section 34-1014. *Candidates prohibited from running in primary or election for more than one office listed.*—No person shall be nominated, nor shall any person be a candidate in a primary, for more than one of the following public offices to be filled at any one election: Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Comptroller General, Treasurer, Commissioner of Agriculture, Commissioner of Labor, United States Senator, or Representative in Congress, Public Service Commissioner, Justice of the Supreme Court, Judge of the Court of Appeals, Ordinary, Clerk of Superior Court, Tax Commissioner, Tax Collector, Sheriff, Judge of Superior Court, County Treasurer, County School Superintendent, Tax Receiver, and members of the Senate and House of Representatives of the General Assembly.

Section 34-1015. *Candidate required to designate specific office sought in certain cases.*—In the case of a candidate seeking one of two or more public offices, each having the same title and to be filled at the same election by the vote of the same electors, such candidate shall, when qualifying with his party in the case of a primary and when filing his notice of candidacy in the case of an election, designate the specific office he is seeking by naming its incumbent or by giving other appropriate designation. Such designation shall be entered on the ballot and ballot

labels in such manner that in the ensuing primary or election such candidate shall only oppose the other candidate or candidates, if any, designating the same specific office."

Section 14. Said Title is further amended by striking from subsection (a) of Code Section 34-1102, relating to primary ballots, the word "by" and inserting in lieu thereof the word "for" and by striking in their entirety subsections (c) and (d), and substituting in lieu thereof the following:

"(c) Immediately under the directions, the names of all candidates, who have qualified with the party in accordance with the provisions of this Title and party rules and who have been certified to the ordinary or Secretary of State as having so qualified, shall be printed on the ballots and the names of the candidates shall in all cases be arranged under the title of the office for which they are candidates, and be printed thereunder in alphabetical order. The incumbency of a candidate seeking party nomination for the public office he then holds shall be indicated on the ballots. Under the title of each office shall be placed a direction as to the number of candidates to be voted for.

(d) If at any primary a political party shall submit to its members any matter or question to be voted upon, the party shall certify the wording of said question to the ordinary, if to be voted on by one county only, or to the Secretary of State, if to be voted on by more than one county, and the ordinary or Secretary of State shall have such language printed on the ballot form. To the left of each question there shall be placed the words 'Yes' and 'No' together with appropriate squares to the left of each for the convenient insertion of a cross (x) or check (✓) mark."

Section 15. Said Title is further amended by inserting in the Title of Code Section 34-1104, relating to the form

of ballots, stubs and numbers, after the words "Form of ballots" the folowing:

"and absentee ballots"

and by inserting immediately before the first sentence thereof the following:

"(a)"

and by adding at the end thereof a new subsection (b) to read as follows:

"(b) The form for the absentee ballot shall be in substantially the same form as the official ballots used in the election districts, except it shall be printed with only the name stub and without a number strip."

Section 16. Said Title is further amended by striking in its entirety subsection (f) of Code Section 34-1209, relating to the preparation and custody of voting machines and substituting in lieu thereof a new subsection (f) to read as follows:

"(f) In every primary or election, the ordinary shall furnish, at the expense of the county, all ballot labels, forms of certificates, and other papers and supplies, required under the provisions of this Code and which are not furnished by the Secretary of State, of all which shall be in the form, and according to the specifications, prescribed, from time to time, by the Secretary of State."

Section 17. Said Title is further amended by striking in its entirety the second paragraph of Code Section 34-1217, relating to the authorization for the use of voting recorders.

Section 18. Said Title is further amended by striking in its entirety subsection (e) of Code Section 34-1225, relating to the preparation and custody of vote recorders and substituting in lieu thereof a new subsection (e) to read as follows:

"(e) In every primary or election, the ordinary shall furnish, at the expense of the county, all ballot labels, forms of certificates, and other papers and

supplies, required under the provisions of this Code and which are not furnished by the Secretary of State, all of which shall be in the form, and according to the specifications, prescribed, from time to time, by the Secretary of State.

Section 19. Said Title is further amended by striking its entirety Code Section 34-1301, relating to instruction cards and supplies and substituting in lieu thereof the following:

"Section 34-1301. Prior to each primary and election, the superintendent shall obtain from the Secretary of State a sufficient number of Cards of Instruction for guidance of electors, such Cards of Instruction to include such portions of the Georgia Election Code as deemed necessary by the Secretary of State and to be printed for the type voting used in the county, i.e., paper ballots, voting machines or vote recorders. The superintendent shall also obtain from the Secretary of State a sufficient number of blank forms of oaths of poll officers, voter's certificates, notices of penalties, oaths of assisted electors, numbered list of voters, tally sheets, return sheets, and such other forms and supplies required by this Code, in each election district of the county."

Section 20. Said Title is further amended by striking the first sentence of Code Section 34-1302, relating to voter's certificates and substituting in lieu thereof the following:

"The Secretary of State shall prepare and furnish to the superintendent for each primary and election the required number of voter's certificates which shall be in substantially the following form:".

Section 21. Said Title is further amended by striking in their entirety subsections (b) and (c) of Code Section 34-1302, relating to voter's certificates and substituting in lieu thereof the following:

"(b) The voter's certificates shall be so prepared as to be capable of being inserted by the poll officers

in a suitable binder to be furnished by the Secretary of State, in sufficient quantities for each election district, for each primary or election. The binder shall have written thereon the words 'Voter's Certificates' and shall have a space for filling in the designation of the election district and the date of the primary or election."

Section 22. Said Title is further amended by striking the fifth sentence of subsection (b) of Code Section 34-1303, relating to the delivery of ballots and supplies to managers, which reads as follows:

"In a primary, where the parties do not agree to have only one set of managers for an election district, the electors list shall be delivered to the chief manager of the political party which polled the highest number of votes in the election district in the immediately preceding governor's election."

Section 23. Said Title is further amended by deleting from subsection (c) of Code Section 34-1308, relating to the duties and meeting of poll officers, the second sentence which reads as follows:

"In primaries being held with separate election district managers, the chief managers appointed by each party shall jointly appoint the person or persons to be in charge of the electors list."

Section 24. Said Title is further amended by striking from subsection (a) of Code Section 34-1322, relating to the count and return of votes, the following phrase which appears in the second sentence thereof:

"which may be found in the ballot or stub box shall be returned to the proper election officials of the party for whom the ballots were issued.",

and substituting in lieu thereof the following:

"shall be returned to the ballot box for the party for which they were issued. In primaries separate tally and return sheets shall be prepared for each party, and separate poll officers shall be designated

by the chief manager to count and tally each party's ballot."

Section 25. Said Title is further amended by striking from subsection (a) of Code Section 34-1326, relating to signing and disposition of returns, electors list and voter certificates, the following:

"in the case of elections, or the state party in the case of primary".

Section 26. Said Title is further amended by striking from subsection (a) of Code Section 34-1333, relating to the disposition of returns and electors lists and voter certificates, the following:

"in the case of elections, or the state party in the case of primary".

Section 27. Said Title is further amended by inserting in the first sentence of subsection (a) of Code Section 34-1405, relating to the duties of superintendents and registrars, between the words "prepare" and "and", as they appear in the first sentence thereof, the following:

"or obtain".

Section 28. Said Title is further amended by striking in its entirety Code Section 34-1501, relating to the office of superintendent, and substituting in lieu thereof the following:

"Section 34-1501. Office of Superintendent and county board of registrars to remain open during primaries and elections and until completion of count; reports and returns to be made public.—Each superintendent and chairman of the county board of registrars shall cause his office to remain open during the entire duration of each primary and election, and after the close of the polls, until all the ballot boxes and returns have been received in the office of the superintendent, or received in such other place as has been designated by him."

Section 29. Said Title is further amended by deleting from Code Section 34-1504, relating to the computation

and certification of returns by superintendents, paragraph (iii) of subsection (d).

Section 30. Said Title is further amended by striking from Code Chapter 34-15, relating to the returns of primaries and elections, as amended, Code Sections 34-1507 through 34-1516 and substituting in lieu thereof the following:

"Section 34-1507.—*Consolidated Certified Returns of Primaries; returns forwarded to Secretary of State.*—Each superintendent shall prepare four copies of the consolidated return of the primary to be certified by the Superintendent on forms furnished by the Secretary of State, such consolidated returns to be filed immediately upon certification as follows: (1) one copy to be posted at the county courthouse for the information of the public; (2) one copy to be filed in the superintendent's office: (3) one copy to be forwarded to the Secretary of State, together with a copy of each election district return and a copy of the numbered list of voters of each election district, including the election district return and the numbered list of voters for absentee electors for each election district; and (4) one copy to be sealed and filed with the Clerk of the Superior Court as required by Section 34-1515.

"Section 34-1508. *Consolidated Certified Returns of Elections; returns forwarded to Secretary of State.*—Each superintendent shall prepare four copies of the consolidated return of the election to be certified by the Superintendent on forms furnished by the Secretary of State, such consolidated returns to be filed immediately upon certification as follows: (1) one copy to be posted at the county courthouse for the information of the public; (2) one copy to be filed and recorded as a permanent record in the minutes of the superintendent's office; (3) one copy to be sealed and filed with the Clerk of the Superior Court as required by Section 34-1515; and (4) one copy to be returned as follows:

(a) In the case of election for Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Comptroller General, Treasurer, Commissioner of Agriculture, and Commissioner of Labor, the returns shall be sealed up by the superintendent separately from other returns and shall be transmitted immediately to the Secretary of State;

(b) In the case of election of Federal and State officers, except those officers named in (a) above, a separate return showing totals of the votes cast for each of such officers respectively, shall also be forwarded by the Ordinary to the Secretary of State on forms furnished by the Secretary of State.

(c) In the case of elections for any county officer, justice of the peace or other officer required by law to be commissioned by the Governor in any of the several counties of this State, it shall be the duty of the superintendent to transmit immediately to the Secretary of State a certified copy of the returns of all such offices.

(d) In the case of referendum elections provided for by an act of the General Assembly, the returns shall immediately be certified, by the authority holding such election, to the Secretary of State, along with the election district returns and numbered list of voters for each election district. In addition thereto, the official citation of the act involved and the purpose of such election shall be sent to the Secretary of State at the same time. The Secretary of State shall maintain a permanent record of such certifications.

(e) In the case of elections on constitutional amendments, the returns shall be certified immediately to the Secretary of State. Upon receiving the certified returns from the various superintendents, the Secretary of State shall forthwith proceed to canvass and tabulate the votes cast on such amendments, and certify the results to the Governor.

(f) In the case of election for Presidential Electors, a separate return shall be prepared by each

Superintendent and certified immediately to the Secretary of State.

Section 34-1509.—*Constitutional Officers Election Board to tabulate and certify returns for Constitutional officers.*

(a) On the Tuesday next following the general election, the Secretary of State shall transmit said returns to the Constitutional Officers Election Board which shall be composed of the Speaker and Clerk of the House of Representatives, the President Pro Tempore and the Secretary of the Senate, and the chairman of each standing committee of the General Assembly. The Speaker of the House shall act as the chairman of such Board. On said date, the chairman shall convene such Board at such time and place as he shall determine, after having given due notice thereof, to all members of the Board and the candidates named herein. Each candidate shall be entitled to designate one person to be present at the opening the returns. Such Board shall open and publish the returns of each such election. The person having the majority of the whole number of votes in each election shall be declared duly elected, and certified returns shall be made by the Constitutional Officers Election Board and filed with the Secretary of State.

(b) If it shall appear that any of the returns of the election for such offices shall not have been transmitted to the Secretary of State as provided by this Code at the time the Board convenes, the Chairman of the Board shall immediately notify the Chairman of the State Election Board and inform him as to which returns have not been received. It shall be the duty of the Chairman of the State Board to immediately convene the State Election Board for the purpose of completing such returns. The State Election Board shall assume all of the powers, duties and responsibilities of the superintendent of the delinquent county for the purpose of completing the count and tabulation of the votes cast in such county for such offices. It shall be the duty of the superintendent, poll officers and other election officials in such county

to render to the State Election Board all such assistance and cooperation as shall be required to complete such count and tabulation without delay. Upon the request of the State Election Board, all ballots, lists, sheets and all other election paraphernalia as shall be required to complete the returns shall be surrendered to the State Election Board and the Judge of the Superior Court of such county shall take such action as necessary to carry this into effect. The State Election Board shall immediately complete the count and tabulation of such votes and immediately transmit the returns of such elections to the Chairman of the Constitutional Officers Election Board. When the State Election Board has completed its use of the election materials, such materials shall be returned to the county officials from whom received for disposition in accordance with applicable provisions of this Code. As soon as all returns of such elections are in the hands of the Chairman of the Constitutional Officers Election Board, the Chairman shall immediately convene the Board, after giving the notices provided for above, and the Board shall open and publish the returns of each such election certify returns as prescribed above.

Section 34-1510.—*Secretary of State to tabulate, compute, canvass, and certify certain returns.*— Upon receiving the certified returns of any election from the various superintendents, the Secretary of State shall forthwith proceed to tabulate, compute and canvass the votes cast for all candidates described in Section 34-1508 (4) (b) and upon all questions voted for by the electors of more than one county, and shall thereupon certify and file in his office the tabulation thereof. The Secretary of State shall also upon receiving the certified returns for Presidential Electors proceed to tabulate, compute and canvass the votes cast for each state of Presidential Electors, and shall immediately lay them before the Governor. The Governor shall enumerate and ascertain the number of votes for each person so voted and shall certify the slates of Presidential Electors receiving the highest number of votes.

Section 34-1511.—*Certificates of election; commissions; proclamations.*

(a) Governor and other constitutional officers. The person receiving a majority of the votes for the respective offices named in Section 34-1508(4) (a) shall be declared elected thereto, and certificates of election shall be made by the Constitutional Officers Election Board and issued to each person so elected. The Secretary of State shall lay the certified returns filed with him by the Constitutional Officers Election Board before the Governor upon his taking the oath of office as Governor, and the Governor, upon the other constitutional officers taking their oaths of office shall issue a commission under the Great Seal of the State of Georgia signed by the Governor and countersigned by the Secretary of State to each such person. The Secretary of State shall issue the commission to the person elected Governor.

(b) United States Senators; Representatives in Congress; Members of General Assembly; Certificates of Election.

(1) Upon completing the tabulation of any election for United States Senator or Representative in Congress, the Secretary of State shall lay the same before the Governor, who shall immediately issue certificates of election and commissions under the seal of the State, duly signed by himself, and attested by the Secretary of State, and deliver the same to the candidates receiving a majority of the votes for the respective offices.

(2) The Secretary of State shall issue certificates of election to the persons elected members of the Senate and House of Representatives of the General Assembly, and between the hours of twelve noon and one P.M. on the second Monday in January of each odd-numbered year, present before the Senate and the House of Representatives the several returns of the elections of members of the respective Houses. In case of a special election the Secretary of State shall is-

sue a certificate of election to each person so elected and he shall present the returns of such election to the proper House as soon as received and tabulated by him. Immediately upon their taking the oath of office, each member of the Senate and House of Representatives shall be issued a commission under the Great Seal of the State of Georgia, signed by the Secretary of State.

(c) Justices of the Supreme Court, Judges of Court of Appeals, Commissioners of the Georgia Public Service Commission, Judges of the Superior Courts and District Attorneys.—Upon completion of the tabulation the Secretary of State shall certify the result of each election of Justice of the Supreme Court, of Judges of Court of Appeals, of Commissioners of the Georgia Public Service Commission, of Judges of the Superior Court and of District Attorneys to the Governor and shall issue a certificate of election to each person so elected. The Governor shall, upon their taking the oath of office immediately issue a commission under the Great Seal of the State of Georgia, signed by the Governor and countersigned by the Secretary of State, to each such person.

(d) County officers; justices of the peace.—The superintendent in each county shall, as soon as the returns have been properly certified, issue certificates of election to the successful candidates for all county officers and justices of the peace to be filled by the votes of electors of such county. Immediately upon taking the oath of office, each such county officer or justice of the peace shall be issued a commission under the seal of the Executive Department, signed by the Governor, and countersigned by one of his secretaries.

(e) Presidential electors.—The Secretary of State, on receiving and computing the returns of presidential electors, shall lay them before the Governor, who shall enumerate and ascertain the number of votes for each person so voted for, and shall cause a

certificate of election to be delivered to each person so chosen.

(f) Constitutional Amendments.—Upon receiving the certified results of elections on all constitutional amendments from the Secretary of State, the Governor shall issue his proclamation declaring the results of the vote of each amendment.

Section 34-1512.—*Commissions if election contested.*—A commission which is to be issued as provided by this Code to any person elected to any office shall be issued notwithstanding the fact that the election of such persons to any such offices may be contested in the manner provided by this Code. Whenever it shall appear by the final judgment of the proper tribunal having jurisdiction of a contested election, that the person to whom such commission shall have been issued has not been legally elected to the office for which he has been commissioned, then a commission shall be issued to the person who shall appear to be legally elected to such office, and the issuing of such commission shall nullify the commission already issued, and all power and authority under such commission first issued shall thereupon cease.

Section 34-1513. *Majority vote required to nominate or elect; exception; run-off primary of election; Constitutional Officers Election Board to call run-off for Constitutional Officers.*—

(a) No candidate, except as hereinafter provided, shall be nominated for public office in any primary or elected to public office in any election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office. To be elected to the office of presidential electors, no slate of candidates of any political party or body shall be required to receive a majority of the votes cast; but that slate of candidates of a political party or body shall be elected to such offices which receives the highest number of votes cast. In instances where no candidate receives a majority of the votes cast, a run-off primary or election, between the candidates

receiving the two highest number of votes, shall be held on the fourteenth day after the day of holding the preceding primary or election, unless such run-off date is postponed by court order; provided that in the event the candidate receiving the second highest number of votes withdraws, no such run-off shall be held and the candidate receiving the highest number of votes shall be nominated or elected as the case may be; provided further that in the event any candidate eligible to be in a run-off dies, or one of the two candidates originally receiving the highest number of votes is found to be ineligible, the remaining candidates receiving the two highest number of votes shall be the candidates in such run-off. The candidate receiving the highest number of the votes cast in such run-off primary or election to fill the nomination or public office he seeks shall be declared the winner. The name of a write-in candidate eligible for election in a run-off shall be printed on the run-off election ballot in the independent column. Only the electors entitled to vote in the first primary or election shall be entitled to vote in any run-off primary or election resulting therefrom; provided, however, that no elector shall vote in a run-off primary in violation of Section 34-624.

(b) In the event no candidate for the office of Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Comptroller General, Treasurer, Commissioner of Agriculture, or Commissioner of Labor receives a majority of the whole number of votes cast in the general election, the Constitutional Officers Election Board shall continue the election for the office in which no candidate received a majority by immediately calling a run-off election and designating as candidates therein the two persons who received the highest number of votes for the particular office concerned, who continue in life and have not declined to continue as a candidate. This run-off election shall be held on the second Tuesday immediately following the general election. The run-off election shall be a continuation of the general election for the particular office con-

cerned, and only the electors who were entitled to vote in the general election for candidates for that particular office shall be entitled to vote therein; and only those votes cast for the two persons designated by the Constitutional Officers Election Board as candidates in such run-off election shall be counted in the tabulation and canvass of the votes cast. The provisions of Code Section 34-1507 (c), relating to the convening of the Constitutional Officers Election Board, transmission of the returns in the general election, the opening of the returns, their tabulation, canvassing and publication, shall apply to the run-off elections provided for by the provisions of this subsection. On the Tuesday next following the run-off election, the Constitutional Officers Election Board shall convene, open, canvass, tabulate and publish the returns of the run-off election or elections. The person having the highest number of votes entitled to be counted in the run-off election for each of such offices shall be declared duly elected.

Section 34-1514. *Special election on failure to nominate or elect or on death or withdrawal of officer elect.*—Whenever any primary or election shall fail to fill a particular nomination or office and such failure cannot be cured by a run-off primary or election, or whenever any person elected to public office shall die or withdraw prior to taking office, then the authority, with whom the candidates for such nomination or office filed their notice of candidacy, shall thereupon call a special primary or election to fill such position.

Section 34-1515. *Delivery of bailots and other documents to clerk of superior court.*—Immediately upon completing the returns required by this Chapter, the superintendent shall deliver in sealed containers to the clerk of the superior court the used, unused and void ballots and the stubs of all ballots used, numbered lists of voters, tally paper, voting machine paper proof sheet, and return, involved in the primary or election. The clerk shall hold such ballots and other documents under seal (unless otherwise

directed by the superior court) until the next meeting of the grand jury and shall thereupon present such documents to the grand jury for inspection. Such ballots and other documents shall be preserved in the office of the clerk until the adjournment of such grand jury and then they may be destroyed unless otherwise provided by court order."

Section 31. The provisions of this Act shall become effective upon the date of the approval thereof by the Governor, or upon it otherwise becoming law.

Section 32. All laws and parts of laws in conflict with this Act are hereby repealed.

[Certificate of Service Ommitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13,515

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR LEAVE TO AMEND COMPLAINT AND JUDGMENT—Filed April 9, 1970

The Georgia Election Code having been amended subsequent to the filing of this suit, plaintiffs accordingly move to amend their complaint attacking portions of the same in the following particulars:

I. By striking paragraph 9 of their complaint in its entirety and substituting therefor the following to be known as paragraph 9:

> "Candidates for office may be nominated by political parties through primaries or by political bodies at conventions. Candidates nominated by political bodies or who run as independents must file nominating petitions to qualify in elections. 34 Ga. Code Ann., §§ 1001, 1011."

II. By striking paragraph 10 of their complaint in its entirety and substituting therefor the following, to be known as paragraph 10:

> "Candidates for office who are not nominated at a primary run by a political party must circulate nominating petitions according to 34 Ga. Code Ann., § 1010, which is set out at page 18 through 21 of H. B. No. 1304, attached to defendant's answer as Exhibit "A", and incorporated herein by express reference. The essence of said section is that candidates must secure the signatures of five per cent of the total number of electors eligible to vote in the last election for the post which the candidate seeks. 34 Ga. Code Ann., § 1010(b)."

III. By striking paragraph 14 of the complaint in its entirety and substituting therefor the following to be known as paragraph 14:

"Each candidate for office not nominated by a political party (or seeking office in special election or succeeding himself) shall file his notice of candidacy with the Secretary of State, accompanied by nominating petition, by 12:00 noon on the second Wednesday in June preceeding the election. 34 Ga. Code Ann., § 1002(b). The 1970 general election at which the offices of Governor and Congressmen will be contested will be held on November 3, 1970. Nominating petitions may not be circulated more than 180 days prior to the last day on which they may be filed. 34 Ga. Code Ann., § 1010(e)."

IV. By striking paragraph 17 of their complaint in its entirety and substituting therefor the following, to be known as paragraph 17:

"Under Georgia law, the Secretary of State shall set qualifying fees for non-primary candidates required to file for office with him at five per cent of the annual salary of the office according to the provisions of 34 Ga. Code Ann., § 1013(b). The entire Code section relating to qualifying fees is set forth at pages 27 to 31 of H.B. No. 1304, attached to defendants answer as Exhibit "A", and incorporated herein by express reference.

V. By striking paragraph 19 of the Complaint in its entirety and substituting therefor the following to be known as paragraph 19:

"The Secretary of State sets and collects qualifying fees for candidates seeking the offices of Governor and Congressmen."

VI. By striking paragraph 20 of the Complaint in its entirety and substituting therefor the following to be known as paragraph 20:

"Defendant has set the qualifying fee for Congressman for the 1970 election at $2,125.00."

VII. By striking paragraph 21 of the complaint in its entirety and substituting therefor the following to be known as paragraph 21:

"Defendant has set the qualifying fee for Governor for the 1970 election at $2,125.00."

VIII. By striking paragraph 23 of the complaint in its entirety and substituting therefor the following to be known as paragraph 23:

"34 Ga. Code Ann., § 1013 is a completely arbitary and unreasonable standard designed to keep poor persons from participating in elections for the offices of the State of Georgia and from playing an active role in the political affairs of said State. As such, it invidiously discriminates against poor people and denies them and their candidates the right to vote, for their candidates, run for office, and petition for redress of grievances, in violation of the First and Fourteenth Amendments, United States Constitution, and the equal protection clause of Section 1 of the aforesaid Fourteenth Amendment."

IX. By adding the following concluding sentence to paragraph 24:

"The amounts set by the Secretary of State for the offices of Governor and for the 1970 election infringe upon the First and Fourteenth Amendment rights of plaintiffs and members of their class as have the amounts set by him in the past."

X. By striking paragraph 25 of the complaint in its entirety.

XI. By striking the term 34-1004 where it appears in prayers (b)(1) and (2) and (c) and substituting therefore the term "34-1013."

/s/ Howard Moore, Jr.
/s/ Peter E. Rindskopf
Suite 1154
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Atlanta, Georgia 30303
Attorneys for Plaintiffs

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13,515

[File Endorsement Omitted]

GEORGIA SOCIALIST WORKERS PARTY, ET AL., PLAINTIFFS

v.

BEN W. FORTSON, JR., ETC., DEFENDANT

ORDER—April 9, 1970

The above and foregoing motion for leave to amend complaint and amendment read and considered this date,

IT IS HEREBY ORDERED THAT the same be allowed filed and that the complaint be amended as therein, subject to objection.

This 9 day of April, 1970.

/s/ Albert J. Henderson, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13,515

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR SUMMARY JUDGMENT—Filed April 15, 1970

Come now the plaintiffs and move the Court for entry of summary judgment in their favor, pursuant to Rule 56, F.R.C.P. In support whereof, plaintiffs rely upon the pleadings on file and upon the affidavits attached hereto as Exhibits A, B, and C and incorporated herein by reference. As grounds therfor, plaintiffs show the Court:

a. There is no genuine issue of material fact; and,

b. They are entitled to judgment as a matter of law. In the alternative, plaintiffs respectfully request that the Court set the matter down for hearing on their motion for preliminary injunction, already filed, as soon as possible.

WHEREFORE, plaintiffs pray that summary judgment in their favor issue.

/s/ Howard Moore, Jr.
/s/ Peter E. Rindskopf
1154 Citizens Trust Bank Bldg.
Atlanta, Georgia 30303

Attorneys for Plaintiffs

EXHIBIT "A" TO MOTION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13,515

GEORGIA SOCIALIST WORKERS PARTY, ET AL., PLAINTIFFS

v.

BEN W. FORTSON, ETC., DEFENDANT

AFFIDAVIT OF LINDA JENNESS

GEORGIA, FULTON COUNTY: ss

Comes now LINDA JENNESS, who first being duly sworn deposes and says as follows:

That I am the Georgia Socialist Workers Party candidate for Governor in the 1970 election and a plaintiff in the above styled law suit;

That I am unable, because of my poverty, to pay the qualifying fee of $2,125.00 as set by the Secretary of State for the office which I seek;

That I am presently employed as a secretary, with a basic salary of $416.00 per month, before taxes, but that I never earn that much, since I take off at least one or two days per pay period without pay in order to engage in political activity;

That as a consequence, my income approximates $366.00 per month, before taxes, and $282.00 per month, after taxes;

That I pay $75.00 per month rent;

That I do not own a car, real property, or any stocks or bonds;

That I do not have a checking or savings account, nor any other monies hidden away;

That I have three principal debts totaling $2,400.00, for dental expenses, educational loan repayment, and a

personal loan, on which expenses I pay off $95.00 per month; and,

That the above and foregoing is true, correct, and based upon personal knowledge for use in legal proceedings.

/s/ Linda Jenness
LINDA JENNESS

Sworn to and subscribed before me this 14th day of April, 1970.

/s/ Alice M. Lewis
Notary Public
Georgia State at Large
My Commission Expires June 23, 1972

[SEAL]

EXHIBIT "B" TO MOTION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13,515

GEORGIA SOCIALIST WORKERS PARTY, ET AL., PLAINTIFFS

v.

BEN W. FORTSON, ETC., DEFENDANT

AFFIDAVIT

GEORGIA, FULTON COUNTY: SS

Comes now JOSEPH FREDERICK COLE, who first being duly sworn, deposes and says as follows:

That I am the Georgia Socialist Workers Party candidate for Congressman in the Fourth Congressional District in the 1970 election, and a plaintiff in the above styled law suit;

That I am unable, because of my poverty, to pay the qualifying fee for $2,125.00 as set by the Secretary of State for the office which I seek;

That I am presently unemployed with no income;

That I presently live with my parents and pay no rent;

That I was most recently employed three weeks age as a field representative of the GI Civil Liberties Defense Committee, for which I was paid the sum of $65.00 per week;

That I do not own a car, property, stocks or bonds;

That I do not have a checking or savings account or any other monies hidden away;

That I have no outstanding debts; and,

That the above and foregoing is true, correct and based upon personal knowledge for use in legal proceedings.

/s/ Joseph F. Cole
JOSEPH FREDERICK COLE

Sworn to and subscribed before me this 14th day of April, 1970.

/s/ Alice M. Lewis
Notary Public
Georgia State at Large
My Commission Expires June 23, 1972

[SEAL]

EXHIBIT "C" TO MOTION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13,515

GEORGIA SOCIALIST WORKERS PARTY, ET AL., PLAINTIFFS

v.

BEN W. FORTSON, ETC., DEFENDANT

AFFIDAVIT

GEORGIA, FULTON COUNTY: SS

Comes now DOUGLAS JENNESS, who first being duly sworn, deposes and says as follows:

That I am the State Chairman of the Georgia Socialist Workers Party, a political body duly registered as such under the laws of the State of Georgia;

That as State Chairman I am aware of the financial resources of the Party and have consulted the appropriate records to determine the same;

That the party is unable, because of its poverty, to pay the qualifying fee of $2,125.00 set by the Secretary of State for any of its candidates for the offices of Governor, or Congressman in either the Fourth or Fifth Congressional districts;

That the Party presently has assets of $1,035.00, consisting of a checking account of $616.00 and loans outstanding in the amount of $419.00;

That the Party presently has debts of $216.00;

That the Party has no other assets, bank accounts, hidden monies, or property; and,

That the above is true, correct, and based upon personal knowledge for use in legal proceedings.

/s/ Douglas Jenness
DOUGLAS JENNESS

Sworn to and subscribed before me this 14th day of April, 1970.

/s/ Alice M. Lewis
Notary Public
Georgia State at Large
My Commission Expires June 23, 1972

[SEAL]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

Civil Action No. 13,515

GEORGIA SOCIALIST WORKERS PARTY, ET AL., PLAINTIFFS

vs.

BEN W. FORTSON, JR., ETC., DEFENDANT

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. FACTS

Plaintiffs are candidates for the Georgia offices of Governor and Congressmen in the Fourth and Fifth Congressional Districts; voters; and the Georgia Socialist Workers Party, to which the candidates belong and for whose candidates the voters wish to vote for and associate with. Defendant is the Secretary of State of the State of Georgia, who is responsible for (a) collecting nominating petitions of candidates for the offices of Governor and Congressmen; and, (b) for setting and collecting qualifying fees from those who wish to run for such offices.

Suit was filed, together with motions for convening a three judge court and for preliminary injunction, on February 18, 1970. The suit attacked both the nominating petition standard (which requires the signatures of five per cent of the persons registered to vote for the office at the last election wherein it was contested [1] and the qualifying fee standard (which was "reasonably" set by the Secretary of State). Formerly, only non-party candidates were required to pay fees to the Secretary of State; others paid them to their parties.

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[1] Nominating petitions are required to accompany notices of candidacy for candidates who are not nominated by political *parties* in primaries. Plaintiff Georgia Socialist Workers Party is a political *body* and so cannot escape the nominating petition requirement through primary.

On March 20, 1970, a newly amended version of the Georgia Election Code became law. The nominating standard remained unchanged, 34 Ga. Code Ann., § 1010. The qualifying fee standard was, however, changed to require that the fees be set at five per cent of the annual salary of the office sought and further to require that there be some disbursement of fees to the Secretary of State and by him to the counties holding the elections. 34 Ga. Code Ann., § 1013.

Plaintiffs have amended their complaint so as to challenge the new nominating and fee provisions of the election code. There is no provision in that Code for any exception to the fee standard.

Plaintiffs seek declaratory and injunctive relief against the operation of Code Sections 34-1010 and 1013; and injunctive relief to insure that they be placed upon the ballot. The 1970 general election will take place on November 3; notices of candidacy are required of non-party candidates by June 12 at 12:00 noon.

By their attached affidavits, the candidates have shown that neither they nor their party is able to afford the fee of $2,125.00 set by the Secretary of State for each of the offices of Governor and Congressman.

There is no dispute by defendant as to the above stated facts, nor, it may be assumed, will there be a contest over the contents of the attached affidavits, as to the financial inability of the candidates or Party to meet the fee standard.

II. SECTION 34-1010 (Nominating petitions)

This Section remains unchanged from the previous Election Code. It would seem to be completely controlled by the direct precedent and rationale of the Supreme Court decision in *Williams* v. *Rhodes*, 393 U.S. 23. While some of the plaintiffs in that case were troubled by the problem of laches—at least at the Supreme Court level after ballots had already been printed for an election a few days hence—it is hardly a problem. The law which plaintiffs attack was enacted after their complaint was filed! But, cf., Defendant's "First Defense."

In *Williams* v. *Rhodes*, the Supreme Court overturned Ohio's election law structure whereby a candidate needed to secure the signatures of qualified electors equal to 15 percent of the number of votes cast in the last preceding gubernatorial election. As in Georgia, these restrictions were absolute except for already established political parties. And, while Ohio made no provision for independent candidates at all, Georgia subjects them to the same nominating petition hardship that it does the candidates of non-party political groups. The Court held that the Ohio law violated the equal protection clause of the Fourteenth Amendment by giving the advantage to established parties against new ones; and, by placing impermissible burdens upon the right of individuals to associate to advance their political beliefs and to cast votes effectively.

In so holding, the Court directly rejected the state's arguments that it was entitled to restrictive measures to sustain a two-party system; to encourage majority plurality; that dissidents could make their views known within the party structure; and, that a large number of parties on the ballot would confuse and frustrate the electorate. None of these factors overcame the State's need to show a compelling interest in burdening the right to vote and associate.

Finally, it should be noted that the Court made pointed reference to the fact that 42 states require the signatures of 1% or less of the electorate as a condition for third party participation, and that no significant problem has arisen in those states. *Williams* v. *Rhodes*, *supra*, 89 S. Ct. at 12, n.9.

Georgia's nominating petition requirement is fully as onerous as Ohio's, though slightly different in degree. It requires signatures from five per cent of the total number of electors eligible to vote in the last election for the office sought—a figure peculiarly without reason. See 34-1010 (b). The nomination petition requirement is not even tied into the number of voters who actually bothered to vote in the election; rather, it is only a percentage of the number of registered voters. As a result, the number of signatures a Georgia nonparty candidate is required to obtain is closer actually to the 15 percent of the ballots

cast which would not pass constitutional muster in Ohio than would first seem.

It is admitted, for the purposes of this suit, that the number of signatures a gubernatorial candidate must obtain is 88,175 (Complaint, paragraph 13). But, there were only 955,770 votes cast for governor in the last election. Cf. *Fortson* v. *Morris*, 385 U.S. 231 at 236. So, measured against the Ohio standard, a Georgia candidate needs 9.2 percent of the number of ballots cast in the last preceding election. The difference is immaterial; and, accordingly, the Georgia statute must fall.

III. SECTION 34-1013 (Fees)

Defendant is now in the position of enforcing a new fee standard, thanks to the March 20, 1970, amendment to the Georgia Election Code. Plaintiffs can no longer contend that the fee provisions are vague, for they are explicitly tied to 5 percent of the annual salary of the office sought. But, plaintiffs can and do challenge the new provisions of the law on the grounds that they unreasonably infringe upon the rights of poor people to participate in the electoral process as candidates and as voters for and associates of would-be candidates.

The fees which are set under the new law are still substantial amounts. According to their affidavits, the candidates and their political body are unable to afford the sum of $2,125 for the office of either Governor or Congressman.[2]

There is no provision in the law for a candidate to appear on the ballot without paying a fee.

The new law, unlike its predecessor, has at least the semblance of equal protection:[3] for the first time, party

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[2] Indeed, the sum which the Georgia Socialist Workers Party and its candidates are now totally "liable" for has increased; under flexible law, the Secretary of State set the fees for Congressman at $1,500 and for Governor at $2,500. Original Compalint, paragraphs 20 and 21 (Admitted by defendant). The present required total for three candidates is now $6,375; under the old law, it would have been only $5,500.

[3] I.e., equal protection among party and non-party candidates, but not among those who can afford the fees and the poor.

and non-party candidates are required to turn certain amounts to the public, ostensibly for use in defraying the cose of elections. But, even within the new law, the vestiges of party favoritism remain strong. While non-party candidates are required to turn over their entire fees to the Secretary of State, (who in turn pays 75% to the governing authority of the county or counties to be applied to the cost of the election), political parties are allowed to keep 25% of fees paid to them and required to transmit 75% to the Secretary of State (who in turn pays ⅓ to the State Treasury and pays ⅔ to the county or counties to be applied to the cost of the primary and election).

This means that in the case of a party candidate selected without primary opposition, only 75% of the amount paid by the non-party candidate ever gets to the Secretary of State; and, in turn, that only ⅔ of the 75% (or 50 percent of the original fee) ever gets to the county or counties for the purpose of paying off the cost of holding the election. In contrast, the non-party candidate pays all of his fee to the Secretary of State and 75% of the total goes to the county or counties. The result is that in any contest between party and non-party candidates, it is the non-party candidate who pays the major share of the "cost" of his election. Such a system hardly bears out the statute's purportedly rational basis of charging fees to pay the cost of elections.

Thus, the law on fees must fall because of its unfair distinction between party and non-party candidates, as well as because it acts as an absolute bar to political expression for those who cannot meet the fee. The situation is no different from that which obtained in Atlanta during last fall's pre-election campaign. A three judge court, in this district, declared those laws unconstitutional, saying, "The Court doubts that the length of one's pocketbook alone may be made the yardstick as to whether one's name appears on the ballot." *Jenness* v. *Little*, 306 F.Supp. 925 (1969) at 929. To the extent that *Jenness* v. *Little* made new law, it has received Supreme Court support, for in *Turner* v. *Fouche*, —— U.S. ——, 90 S. Ct. 532, Georgia's property requirement

for office holders was struck down. Cf., *Jenness* v. *Little*, *supra*, 306 F. Supp. at 928, n. 1 (citing *Turner* v. *Fouche*, 290 F. Supp. 648, 652, for approval of fees). And, after the City of Atlanta enacted new, lower fees, Mr. Justice Black permitted candidates to run with the filing of pauper's affidavits and no fee payment. *Mathews* v. *Little*, —— U.S. ——, 90 S. Ct. 19, dismissed as moot, —— U.S. ——, 90 S. Ct. 820 Cf. *Harper* v. *Virginia State Board of Education*, 383 U.S. 663.

WHEREFORE, for the foregoing reasons, summary judgment should issue for the plaintiffs.

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/s/ Peter E. Rindskopf
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13,515

[File Endorsement Omitted]

[Title Omitted]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
—Filed April 15, 1970

Come now plaintiffs and submit the following as their proposed findings of fact and conclusions of law, to accompany their motion for summary judgment in accordance with local rules:

I. FINDINGS OF FACT.

1. Plaintiffs LINDA JENNESS, FRANCIS GRINNON, and JOSEPH FREDERICK COLE are candidates for Governor and Congressmen of plaintiff Georgia Socialist Workers Party, a political body registered in the State of Georgia. Plaintiffs CLIFFORD CONNER and JIM GWIN are voters in the Fourth and Fifth Congressional Districts who desire to vote for and associate with GSWP candidates.

2. Defendant Ben W. Fortson, Jr., is Secretary of State of the State of Georgia, with his official place of business within the Northern District of Georgia.

3. Plaintiffs filed suit on February 18, 1970, attacking Georgia Code Sections 34-1010 and 1004, which provisions required nominating petitions to accompany notices of candidacy of non-party candidates and required that such candidates pay "reasonable" fees to the Secretary of State.

4. On March 20, 1970, an amended version of the Georgia Election Code became law. The new version left the nominating petition provisions untouched in § 34-1010 and changed the fee provisions to 5 percent of the annual salary for the office sought. § 34-1013.

5. Plaintiffs have attacked new Sections 34-1010 and 34-1013 by amendment to their complaint.

6. Plaintiffs Jenness, Cole, and Georgia Socialist Workers Party cannot afford the fees set for the offices they seek because of their poverty.

7. Fees for the offices of Governor and Congressmen have been set at $2,125.

8. Non-party candidates must obtain 88,175 signatures to appear on the ballot for Governor and 10,904 and 11,008 signatures to appear on the ballot for Congressman in the Fourth and Fifth Congressional Districts.

9. There are no exceptions under Georgia law for non-party candidates to appear on the ballot who fail to meet the nominating petition number of signatures; and, there are no exceptions under Georgia law for non-party candidates to appear on the ballot who are unable, because of their poverty, to meet the fees set by the Secretary of State for the offices they seek.

10. Non-party candidates are required to turn over the entire fee set to the Secretary of State, who in turn, must give 25% of the fee to the State Treasury and 75% to county officials.

11. Party candidates are required to turn over 75% of the fee set to the Secretary of State, who in turn must give ⅓ of the amount he receives to the State Treasury and ⅔ of the amount he receives to county officials.

12. The 1970 General Election will be held on November 3, 1970.

13. Non-party candidates for office are required to file their notices of candidacy, nominating petitions and fees with the Secretary of State on or before 12:00 noon on June 12, 1970.

14. Under § 34-1010, candidates filing nominating petitions are required to obtain the signatures of registered voters equal to five percent of the number of voters who were registered to vote for the office they seek at the last general election for the same.

II. CONCLUSIONS OF LAW.

1. This Court has jurisdiction under 28 U.S.C., §§ 1331 and 1343(3) and (4).

2. A three judge court has been properly invoked and convened under 28 U.S.C., §§ 2281 and 2284.

3. This is a class action for declaratory and injunctive relief against the operation, enforcement, and execution of two statutes of state-wide application, §§ 34-1010 and 34-1013, Ga. Code Ann., 1970 Ga. L. —— (March 20, 1970).

4. Plaintiffs, as candidates and registered voters, have standing to attack §§ 34-1010 and 34-1013, for they are directly and materially affected thereby.

5. Plaintiffs are not guilty of laches, the Georgia Election Code having been amended subsequent to their filing this suit.

6. The exclusive provisions of § 34-1010, which require a non-party candidate for office to gather signatures of registered voters equal to five percent of the number of voters registered to vote for the office he seeks at the last general election therefor in order to appear on the ballot violate the First and Fourteenth Amendments, United States Constitution, by infringing upon and limiting the right of persons to express, associate with, and vote for persons of their choice; and, by denying equal protection to non-party as opposed to party candidates for office.

7. The exclusive provisions of § 34-1013, which require a non-party candidate for office to pay the Secretary of State a fee equal to five percent of the amount of the annual salary for the office he seeks in order to appear on the ballot, violate the First and Fourteenth Amendments, United States Constitution, in that it conditions the rights of expression, association, and voting upon the ability of the prospective candidate to meet a mandatory fee and, in that it requires a non-party candidate to pay a greater amount to the Secretary of State and to county officials than it does of party candidates, thereby violating the equal protection clause of the Fourteenth Amendment.

8. Plaintiffs are entitled to declaratory and injunctive relief against the operation, enforcement, and execution of §§ 34-1010 and 34-1013.

9. Plaintiffs are entitled to an injunction forbidding the Secretary of State from not placing them on the ballot for the November, 1970 general elections for failure to comply with the provisions of §§ 34-1010 and 34-1013.

Dated: this 14th day of April, 1970.

/s/ Howard Moore, Jr.
/s/ Peter E. Rindskopf
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Atlanta, Georgia 30303
Attorneys for Plaintiffs

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action File No. 13,515

[File Endorsement Omitted]

[Title Omitted]

STIPULATIONS—Filed May 7, 1970

1. Plaintiffs LINDA JENNESS, FRANCIS GRINNON, and JOSEPH FREDERICK COLE are candidates for Governor and Congressman of plaintiff Georgia Socialist Workers Party, a political body registered in the State of Georgia. Plaintiffs CLIFFORD CONNER and JIM GWIN are voters in the Fourth and Fifth Congressional Districts who desire to vote for and associate with GSWP candidates.

2. Defendant Ben W. Fortson, Jr., is Secretary of State of the State of Georgia, with his official place of business within the Northern District of Georgia.

3. Plaintiffs filed suit on February 18, 1970, attacking Georgia Code Sections 34-1010 and 1004, which provisions required nominating petitions to accompany notices of candidacy of non-party candidates and required that such candidates pay reasonable fees to the Secretary of State.

4. On March 20, 1970, an amended version of the Georgia Election Code became law. The new version left the nominating petition provisions untouched in § 34-1010 and changed the fee provisions to 5 percent of the annual salary for the office sought. § 34-1013.

5. Plaintiffs have attacked new Sections 34-1010 and 34-1013 by amendment to their complaint.

6. Plaintiffs Jenness, Cole, and Georgia Socialist Workers Party cannot afford the fees set for the offices they seek because of their poverty.

7. Fees for the offices of Governor and Congressman have been set at $2,125.

8. Non-party candidates must obtain 88,175 signatures to appear on the ballot for Governor and 10,904 and 11,008 signatures to appear on the ballot for Congressman in the Fourth and Fifth Congressional Districts.

9. There are no exceptions under Georgia law for non-party candidates to appear on the ballot who fail to meet the nominating petition number of signatures; and, there are no exceptions under Georgia law for non-party candidates to appear on the ballot who are unable, because of their poverty, to meet the fees set by the Secretary of State for the offices they seek.

10. Non-party candidates are required to turn over the entire fee set to the Secretary of State, who in turn, must give 25% of the fee to the State Treasury and 75% to county officials.

11. Party candidates are required to turn over the entire fee to the party which in turn turns over 75% of the fee to the Secretary of State, who in turn must give ⅓ of the amount he receives to the State Treasury and ⅔ of the amount he receives to county officials.

12. The 1970 General Election will be held on November 3, 1970.

13. All candidates for office are required to file their notices of candidacy, nominating petitions, if required by law, and fees with the Secretary of State on or before 12:00 noon on June 12, 1970.

14. Under § 34-1010, candidates filing nominating petitions are required to obtain the signatures of registered voters equal to five percent of the number of voters who were registered to vote for the office they seek at the last general election for the same.

15. Although it is impossible to predict the exact costs of holding either the 1970 general primary or general election, it is a reasonable estimate that the sum will approximate $2,000,000. This estimate does not include additional funds necessary if a run-off is required in either instance.

16. The sums incurred by the State of Georgia in examining the State-wide nomination petitions (as required by Ga. Code § 34-1011) of Howard Callaway,

candidate for Governor in 1966, and George Wallace, candidate for President in 1968, were approximately $77,000 and $81,000 respectively.

/s/ Peter E. Rindskopf
Counsel for Plaintiffs

/s/ Robert J. Castellani
Of Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action File No. 13,515

[File Endorsement Omitted]

[Title Omitted]

APPENDIX ON NOMINATING PETITION REQUIREMENTS OF STATES MINNESOTA THROUGH WYOMING—
Filed May 19, 1970

At the May 12, 1970, hearing in this case the Court requested an appendix of the nominating petition percentage requirements of the various states. Counsel for the parties divided the task alphabetically so that counsel for the plaintiffs would submit the appendix on the states up to Minnesota and counsel for the defendant would submit an appendix on the states from Minnesota to the end.

The figures are as follows:

1. *Minnesota.* (Statutes 202.09). For state-wide office, the law requires a nominating petition containing signatures of one (1%) percent of the entire vote cast in the last general election or 2,000 signatures whichever is lesser. For Congressional representative, state law requires a nominating petition containing signatures of five (5%) percent of the vote cast in the last general election or 1,000 signatures, whichever is lesser.

2. *Mississippi.* (Code 3-3260). For state-wide office, the law requires a nominating petition containing signatures of 1,000 qualified electors. For Congressional representative, state law requires a nominating petition containing signatures of 200 qualified electors.

3. *Missouri.* (Statutes 120.180). For state-wide office, the law requires a nominating petition containing signatures from each Congressional district equalling one

(1%) percent of the total votes cast in that district for Governor at the last election or two (2%) percent of the votes cast in each of ½ of the Congressional districts at the last general election for Governor. For Congressional representative, state law requires nominating petition containing signatures of not less than two (2%) percent of the number of persons who voted at the last general election.

4. *Montana.* (Code 23-3318). For state-wide office, the law requires a nominating petition containing signatures of five (5%) percent or more of the votes cast for the successful candidate in the same office at the last election. The same requirement obtains for all elective offices.

5. *Nebraska.* (Statutes 32-504). For state-wide office, the law requires a nominating petition containing signatures of not less than 1,000 qualified electors. For Congressional representatives, state law requires a nominating petition containing signatures of ten (10%) percent of the total votes cast for Governor within the district not to exceed 1,000 qualified voters.

6. *Nevada.* (Statutes 293.200). For state-wide office, the law requires a nominating petition containing signatures of five (5%) percent of the total number of voters voting for representative in Congress at the last election. The same requirement obtains for Congressional nominating petitions.

7. *New Hampshire.* (Statutes 56:67). For state-wide office, the law requires a nominating petition containing signatures of 1,000 qualified voters. For a Congressional office, state law requires nominating petition containing signatures of 500 qualified voters.

8. *New Jersey.* (Statutes 19:13-5). Signatures of two (2%) percent of the entire votes cast for the members of the General Assembly at the last election, not to exceed 800 signatures in the event of a state-wide office and not to exceed 100 in the event of a Congressional representative.

9. *New Mexico.* (Statutes 3-8-2, 3-8-3). Nominating petition for state-wide office not less than five (5%) percent of the qualified electors, the number of voters having cast votes at the last election for Governor being the presumptive figure for the number of qualified voters.

10. *New York.* (Election Code 17-138(5)). State-wide office, the law requires a nominating petition containing signatures of 1,000 qualified voters. For Congressional representative, the state law requires a nominating petition containing signatures of five (5%) percent of the votes cast for Governor at the last election.

11. *North Carolina.* (Statutes 163-122). For state-wide office, the law requires a nominating petition containing signatures of twenty-five (25%) percent of those who voted in the last gubernatorial election. For an independent candidate, the same requirement obtains for Congresional representative. North Carolina law requires a petition of 10,000 registered voters to start a new political party. Code § 163-96.

12. *North Dakota.* (Code 16-03-02). For state-wide office, the law requires a nominating petition containing signatures of not less than 300 electors. For Congressional representative, the state law requires a nominating petition containing signatures of ten (10%) percent of the votes cast in the district for member of Congress at the last election, but no more than 300.

13. *Ohio.* (Code 3513.258). For state-wide office, the law requires a nominating petition containing signatures of four (4%) percent of the number who voted for Governor at the last general election. Same requirement obtains for Congressional representative.

14. *Oklahoma.* (Statutes 26 § 161). For state-wide office, the law requires a nominating petition containing signatures of five (5%) percent of the electors eligible to vote for the candidate. For Congressional representative, the same requirement obtains.

15. *Oregon.* (Statutes 249.740). For state-wide office, the law requires a nominating petition containing signa-

tures of three (3%) percent of the votes cast for the candidates for presidential electors in the last election. The same requirement obtains for Congressional representative.

16. *Pennsylvania.* (Statutes 25 § 2911). For state-wide office, the law requires a nominating petition containing signatures of one (1%) percent of the largest entire vote cast for any elected candidate at the last election. Congressional representative, the requirement will be two (2%) percent of the largest vote cast for any officer elected at the last election in that Congressional district.

17. *Puerto Rico.* (Laws 16 § 112). For territory-wide office, the law requires a nominating petition containing signatures of five (5%) percent of the total votes cast for Governor. The same requirement obtains for Congressional representative.

18. *Rhode Island.* (Laws 17-16-1). For state-wide office, the law requires a nominating petition containing signatures of 500 qualified voters. The same requirement obtains for Congressional representative.

19. *South Carolina.* (Code 23-251). For state-wide office, the law requires a nomination petition must be signed by 10,000 electors. Same requirement obtains for Congressional delegates.

20. *South Dakota.* (Code 1-16.0501). Nominating petition for state-wide office of not less than two (2%) percent and no more than five (5%) percent of the voters residing within the area, based upon the total combined votes for Governor at the last election.

21. *Tennessee.* (Code 1-1206). For state-wide office, the law requires a nomination petition must be signed by 25 voters. Same requirement obtains for Congressional representative.

22. *Texas.* (Election Code Article 13.50). State-wide office, the law requires a nomination petition containing signatures of one (1%) percent of the entire votes cast for Governor at the last general election. For Congres-

sional representative, it will be two (2%) percent of the votes cast for Governor.

23. *Utah.* (Code 20-3-38). For state-wide office, the law requires a nominating petition containing signatures of 300 voters. For Congressional representative, it is 100 voters.

24. *Vermont.* (Statutes 17 § 573). For state-wide office, the law requires a nominating petition containing signatures of one (1%) percent of the votes cast for Governor in the State. Same requirement obtains to Congressional representative.

25. *Virgin Islands.* (Code 18 § 381). Nominating petitions for territory-wide office will be at least 100 signatures. For district office, at least 50 signatures.

26. *Virginia.* (Code 24-133). For state-wide office, the law requires a nominating petition containing signatures of at least 250 voters. Same requirement obtains for Congressional representative.

27. *Washington.* (Code 29.24.040). For state-wide office, the law requires a nominating petition containing signatures of at least 100 registered voters who have not participated in any other party's primary. Same requirement obtains to Congressional representatives.

28. *West Virginia.* (Code 3-5-23). For state-wide office, the law requires a nominating petition containing signatures of one (1%) percent of the entire votes cast at the last election for the office. Same requirement obtains to Congressional representatives.

29. *Wisconsin.* (Statutes 5.18). For state-wide office, the law requires a nominating petition containing signatures of at least 5,000 electors. Congressional representatives will be 3% those in the district voting at the last general election for Governor.

30. *Wyoming.* (Statutes 22-118.11). For state-wide office, the law requires a nominating petition containing signatures of not less than five (5%) percent of the votes cast for Congressional representatives at the last general

election. Same requirement obtains as to Congressional representatives.

The above appendix was prepared from research utilizing the materials of the Georgia State Library located at the Judicial Building. In most instances, copies of the 1970 session laws of the various states were not yet available.

Respectfully submitted,

/s/ Arthur K. Bolton
Attorney General

/s/ Harold N. Hill, Jr.
Executive Assistant Attorney General

/s/ Robert J. Castellani
Assistant Attorney General

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13515

[File Endorsement Omitted]

GEORGIA SOCIALIST WORKERS PARTY, LINDA JENNESS, JOSEPH FREDERICK COLE, FRANCIS GRINNON, CLIFFORD D. CONNER, and JIM GWIN

vs.

BEN W. FORTSON, JR., Individually and as Secretary of State of the State of Georgia

Before: BELL, Circuit Judge, EDENFIELD and HENDERSON, District Judges.

ORDER—June 9, 1970

The above and foregoing case having been argued and submitted to the Court for decision, and it appearing that the deadline for qualifying for office under state law is June 10, 1970, at 12:00 o'clock noon,

IT IS HEREBY ORDERED THAT, with respect to the plaintiffs in this case who allege themselves to be prospective candidates, the deadline for qualifying for state office be and the same hereby is extended for a period of twelve (12) days and until Monday, June 22, 1970, at 12:00 o'clock noon, pending further orders of this Court.

This 9th day of June, 1970.

/s/ Griffin B. Bell N.E.
Circuit Judge

/s/ Newell Edenfield
District Judge

/s/ Albert J. Henderson, Jr. N.E.
District Judge

IN THE UNITED STATES DISTRICT COURT
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vs.

BEN W. FORTSON, JR., Individually and as Secretary of State of the State of Georgia

Before: BELL, Circuit Judge, EDENFIELD and HENDERSON, District Judges.

SUPPLEMENTAL ORDER—June 10, 1970

The order in this case dated June 9, 1970, is hereby modified by inserting the words "and federal" after the word "state" and before the word "office" in the third line of the second paragraph.

This 10th day of June, 1970.

/s/ Griffin B. Bell N.E.
Circuit Judge

/s/ Newell Edenfield
District Judge

/s/ Albert J. Henderson N.E.
District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13515

[File Endorsement Omitted]

GEORGIA SOCIALIST WORKERS PARTY, LINDA JENNESS, JOSEPH FREDERICK COLE, FRANCIS GRINNON, CLIFFORD D. CONNER, and JIM GWIN

vs.

BEN W. FORTSON, JR., Individually and as Secretary of State of the State of Georgia

ORDER—June 22, 1970

Before: BELL, Circuit Judge, EDENFIELD and HENDERSON, District Judges.

EDENFIELD, District Judge:

The relevant facts in this action for declaratory and injunctive relief are not disputed. Plaintiff Georgia Socialist Workers Party (hereinafter GSWP) is a "political organization" within the meaning of Ga. Code Ann. § 34-103(t). Plaintiff Linda Jenness is a member of GSWP and desires to be a candidate for governor of Georgia. Plaintiffs Cole and Grinnon are GSWP members and desire to be candidates for Congress for the Fourth and Fifth Congressional Districts, respectively. Plaintiffs Conner and Gwin are voters in the Fourth and Fifth Districts, respectively. They desire to represent, as a class, all registered Georgia voters who desire to consider persons on the Georgia general election ballot other than Democratic or Republican nominees. Defendant Fortson is the Georgia Secretary of State.

Plaintiffs initially attacked the provisions for nominating petitions for non-party candidates under former Ga. Code Ann. § 34-1010 and provisions for qualification

fees under former Ga. Code Ann. § 34-1004. These provisions were amended by House Bill No. 1304 which was approved by the Governor of Georgia on March 20, 1970. The United States Attorney General has approved these amendments to the election code as required by Section 5 of the Voting Rights Act of 1965. By amendment, plaintiffs now attack the comparable provisions of the new law.

Under the current Georgia law a "political party" is a political organization having candidates or electors who received 20% of the votes cast at the preceding gubernatorial or presidential election. Ga. Code Ann. § 34-103(u). A "political body" is a political organization which, like GSWP, did not maintain candidates for governor or presidential elector who received 20% of the vote in the preceding gubernatorial or presidential election. Ga. Code Ann. § 34-103(s). While political parties may nominate candidates through primaries without submitting nominating petitions, nominees of "political bodies" and independent candidates must file nominating petitions to obtain ballot space. Ga. Code Ann. § 34-1001. These nominating petitions must include the names "of not less than five percent of the total number of electors eligible to vote in the last election for the filling of the office the candidate is seeking. . . ." Ga. Code Ann. § 34-1010(b). The total time allowed for circulating nominating petitions is 180 days (Ga. Code Ann. § 34-1010(e)); and the petitions must be filed by 12:00 noon on the second Wednesday in June. Ga. Code Ann. § 34-1002(b). Plaintiffs allege the petition requirements above create an invidious distinction between party members and non-party members and therefore violate plaintiffs' Fourteenth Amendment rights to equal protection of the law. Furthermore, plaintiffs allege the petition requirements unconstitutionally burden their First Amendment rights to freedom of speech, petition and association as well as their "right to vote."

Concerning the qualification fee requirements, current Georgia law provides that the qualification fee for candidates for gubernatorial and congressional office shall be 5% of the annual salary of the office. Ga. Code Ann.

§ 34-1013(a)(2). For the 1970 election the fees for the office of governor and congressman are $2125. Plaintiffs Jenness, Cole and GSWP have filed affidavits saying they cannot afford to pay the filing fees because of poverty. Plaintiffs allege the fee requirements invidiously discriminate against poor people in violation of the Equal Protection Clause; furthermore, plaintiffs allege the fee requirements deny poor people the right to run for office, to vote for candidates of their choice and to petition for redress of grievances in violation of the First and Fourteenth Amendments.

Plaintiffs allege jurisdiction under 28 U.S.C.A. §§ 1331, 1343(3) and (4), and 28 U.S.C.A. § 2201. The action is brought under 42 U.S.C.A. § 1983 and injunctive and declaratory relief is requested. Upon plaintiffs' application, a three-judge court was constituted pursuant to 28 U.S.C. §§ 2281, 2284, because plaintiffs are seeking injunctive relief against a statute of state-wide application. Plaintiffs have moved for summary judgment and filed supporting affidavits.

I. *Standing*

At the outset, the standing of the various parties to challenge the Georgia laws should be considered. Regarding the challenge to the nomination petition requirements, non-party candidates Jenness, Cole and Grinnon certainly have standing to challenge the requirements directly affecting them. The GSWP would also have standing to challenge the petition requirements. *Williams* v. *Rhodes*, 393 U.S. 23 (1968). The standing of voters Conner and Gwin could be questioned. *Jenness* v. *Little*, 306 F.Supp. 925, 927 (N.D.Ga. 1969). The Court has not hesitated to find standing where voters were contesting denial of access to the ballot. *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969); *Cipriano* v. *City of Houma*, 395 U.S. 701 (1969). Thus, it could be argued, voters should also have standing to contest the constitutionality of the content of the ballot to which they receive access. But in any event, since the candidates and GSWP clearly have standing to raise all the issues, and the voters do not request any relief not requested

by the candidates and GSWP, the question of the voters' standing is not crucial. Regarding the qualification fee requirements, candidates Jenness, Cole and Grinnon again have standing. The GSWP would also have standing to challenge the fees to which its candidates are subjected. Again, the question of the voters' standing is not clear, but is not crucial since other plaintiffs have standing to assert all the allegations raising the questions to be considered.

II. *Nominating Petition Requirements*

Plaintiffs base their claim that the nominating petition requirements violate plaintiffs' rights to equal protection of the law on *Williams* v. *Rhodes*, 393 U.S. 23 (1968). In *Williams* the plaintiffs attacked a series of Ohio election laws requiring, among other things, that presidential electors for non-party candidates file petitions signed by voters totaling 15% of the number of ballots cast in the last preceding gubernatorial election. Candidates of political organizations qualifying as parties did not have to file nominating petitions. Considering these *and other* Ohio election laws, the Court held "the *totality of the Ohio restrictive laws taken as a whole* imposes a burden on voting and associational rights which we hold is an invidious discrimination in violation of the Equal Protection Clause." (Emphasis supplied.) 393 U.S. at 34.

But the maze of Ohio laws struck down in *Williams* contained restrictions far more severe than Georgia's simple requirement concerning the number of names required on a nominating petition. It would be difficult to describe the combined restrictions imposed by Ohio any better than did Mr. Justice Douglas in his concurring opinion in *Williams*. As he says:

> "Ohio, through an entangling web of election laws, has effectively foreclosed its presidential ballot to all but Republicans and Democrats. It has done so initially by abolishing write-in votes so as to restrict candidacy to names on the ballot; it has eliminated all independent candidates through a requirement that nominees enjoy the endorsement of a political

party; it has defined 'political party' in such a way as to exclude virtually all but the two major parties.

"A candidate who seeks a place on the Ohio presidential ballot must first compile signatures of qualified voters who total at least 15% of those voting in the last gubernatorial election. In this election year, 1968, a candidate would need 433,100 such signatures. Moreover, he must succeed in gathering them long before the general election, since a nominating petition must be filed with the Secretary of State in February. That is not all: having compiled those signatures, the candidate must further show that he has received the nomination of a group which qualifies as a 'political party' within the meaning of Ohio law. It is not enough to be an independent candidate for President with wide popular support; one must trace his support to a political party.

"To qualify as a party, a group of electors must participate in the state primary, electing one of its members from each county ward or precinct to a county central committee; two of its members from each congressional district to a state central committee; and some of its members as delegates and alternates to a national convention. Moreover, those of its members who seek a place on the primary ballot as candidates for positions as central committeemen and national convention delegates must demonstrate that they did not vote in any other party primary during the preceding four years; and must present petitions of endorsement on their behalf by anywhere from five to 1,000 voters who likewise failed to vote for any other party in the last preceding primary. Thus, to qualify as a third party, a group must first erect elaborate political machinery, and then rest it upon the ranks of those who have proved both unwilling and unable to vote.

"Having elected a central committee, the group has it convene a state convention attended by 500 delegates duly apportioned throughout the State according to party strength. Delegates to the state convention then go on to choose presidential electors for certification on the November ballot, while elected delegates to the national convention go on to nomi-

nate their candidate for President. Ohioans, to be sure, as a result of the decision below, enjoy the opportunity of writing in the man of their choice on the ballot. But in a presidential election a vote for a candidate is only operative as a vote for the electors representing him; and where the State has prevented that candidate from presenting a slate of electors for certification, the write-in vote has no effect. Furthermore, even where operative, the write-ins are no substitute for a place on the ballot." 393 U.S. at 35-37 (Douglas, J., concurring).

It takes no more than a glance at these combined requirements to see that the Court, in *Williams*, was confronted with much more than a single statute requiring the signatures of 5% of the voters on a nominating petition. Moreover, the Court in *Williams* did not strike down even a 15% requirement as such. Indeed, the Court was very careful to make it clear that it did not do so, and it appears that only Mr. Justice Harlan thought it was exorbitant. As previously stated, what the Court did strike down in *Williams* was the *combination* of restrictions, considering their total effect. This appears from every opinion in the case, majority, concurring, and dissenting. As the majority says:

> "Considering these Ohio laws *in their totality*, this [the State's] interest cannot justify the very severe restrictions on voting and associational rights which Ohio has imposed." (Emphasis supplied.) *Id.* at 32.

Again:

> "These barriers of party, timing, and structure are great obstacles. *Taken together* they render it difficult, if not impossible, for a man who disagrees with the two major parties to run for President in Ohio, to organize an opposition, and to vote a third ticket." (Emphasis supplied.) *Id.* at 38 (Douglas, J., concurring).

Further:

> "Cumbersome election machinery can effectively suffocate the right of association, the promotion of

political ideas and programs of political action, and the right to vote. *The totality* of Ohio's requirements has those effects." (Emphasis supplied.) *Id.* at 39 (Douglas, J., concurring).

Elsewhere in the various opinions the Court discusses the 15% requirement as such and clearly indicates that the opinion of the Court is not based upon it alone. Thus, in the dissenting opinion of Mr. Justice White at page 62, he said:

> "In this connection there is no suggestion in the majority opinion that Ohio, merely by requiring potential candidates to participate in a primary, has acted unreasonably. Indeed, this requirement provides the opportunity for the presentation and winnowing out of candidates which is surely a legitimate objective of state policy. *Nor is it held that Ohio's requirement, pursuant to this objective, that parties must show their base of popular support by obtaining the signatures of 15% of Ohio's gubernatorial voters is itself unreasonable.*" (Emphasis supplied.) *Id.* at 62.

Again, in the dissenting opinion of Mr. Justice Stewart, at page 55, the Court also said:

> "It is suggested that the disparity between this figure [10% for existing political parties] and the 15% requirement applicable to new parties is invidiously discriminatory. I cannot accept the theory that Ohio is constitutionally compelled to apply precisely the same numerical test in determining whether established parties enjoy widespread support as it applies in determining that question with regard to new parties.
>
> "It is by no means clear to me that as an abstract matter there are no differences between parties that have long been on the ballot in a State and those that have not, such as might justify disparate standards for determining in those two classes of cases when widespread support, required for ballot position, has been demonstrated." *Id.* at 55.

Finally, at page 48, Mr. Justice Harlan, while expressing the opinion that 15% was too high, still left open the question as to what would be reasonable. In doing so, he said:

> "Since Ohio's requirement is so clearly disproportionate to the magnitude of the risk that it may properly act to prevent, *I need not reach the question of the size of the signature barrier a State may legitimately raise against third parties on this ground.* This should be left to the Ohio Legislature in the first instance." (Emphasis supplied.) *Id.* at 48.

At page 47, in a footnote, Mr. Justice Harlan also makes reference, without comment, to the signatures required by other states, listing them as follows:

"De minimis to 0.1%	16 [States]
0.1% to 1%	26 [States]
1.1% to 3%	3 [States]
3.1% to 5%	4 [States]"[1]

Mr. Justice Warren summed up the matter in his dissent by saying:

> "The net result of the Court's action is that this Court is writing a new presidential election law for the State of Ohio without giving the Legislature or the courts of that State an opportunity to appraise

[1] It is also interesting to note that of the states and territories five have petition requirements equalling those of Georgia: Oklahoma, District of Columbia, and Puerto Rico, like Georgia, require independent candidates to secure petitions containing the names of 5% of the eligible voters; Arkansas and North Carolina require in excess of 5% of the eligible voters. North Dakota requires either 10% of the votes cast or 300 signatures, whichever is less. Of the remaining 21 states having percentage requirements the percentage varies from ½% to 5% of the votes cast (not 5% of the eligible voters as required by Georgia). Another 22 states and territories have flat number requirements for signatures. Twenty of these states require from 25 to 2500 signatures. South Carolina requires 10,000 signatures and Illinois requires 25,000 signatures. Florida has no petition requirement.

their statutes in litigation or to eliminate any consitutional defects prior to a decision by this Court." *Id.* at 68.

Clearly, therefore, neither in *Williams* nor elsewhere has the Court ruled that the requirement of the signatures of 5%, or even 15%, of the voters on nominating petitions is unconstitutional. True, it may do so yet; but in the meantime this Court simply cannot say, as a matter of law, that Georgia's 5% is either unreasonable[2] or that it constitutes invidious, intentional, or purposeful discrimination as charged by the plaintiffs.

The prayers of the plaintiffs' petition respecting the signature requirements are denied.[3]

III. *Qualification Fee Requirements*

Plaintiffs also attack the requirement in Ga. Code Ann. § 34-1013 that candidates pay qualifying fees amounting to 5% of the annual salary of the office for which the candidates are running. Plaintiffs allege this fee requirement denies poor people equal protection of the law; in addition, the plaintiff voters and candidates allege the requirement violates their rights to vote and to run for office.

In *Jenness* v. *Little*, 306 F.Supp. 925 (N.D.Ga. 1969), a three-judge court in this district expressed the opinion that "to prohibit candidates from getting their names on

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[2] The Court is strengthened in this conclusion by the fact that in the last general election in Georgia a Republican candidate for governor not only did qualify by obtaining the necessary signatures, but in fact went on to receive a plurality of the votes cast.

[3] The Court might also comment on the fact that here, as in *Williams*, the plaintiffs started the present action so late as to make it difficult, if not impossible, to comply with the Georgia requirements. Under Georgia law signatures to a nominating petition may be solicited for a period of six months prior to the qualifying deadline and must be filed on the qualifying date. Here, the qualifying deadline was June 10th. The suit was not filed until February 18th so that approximately half the solicitation time had elapsed before the suit was brought. It thus appears that any additional inconvenience to plaintiffs on this ground they brought upon themselves.

the ballot *solely* because they cannot post a certain amount of money is illegal and unconstitutional." (Emphasis supplied.)

There we went on to hold, however:

> "We make no such holding with respect to the exaction of a qualifying fee in future elections where the candidate can get his name on the ballot in some other fashion, either by nominating petition, primary election, or pauper's affidavit. Whether the City in the future wishes to continue to collect reasonable qualifying fees in conjunction with such alternatives is a matter for the City to decide." *Id.* at 929.

We are aware that since that opinion a three-judge district court in Florida has apparently reached a different result, holding that the exaction of qualifying fees in general and qualifying fees of 5% of the annual salary in particular was legal, irrespective of indigency. *Wetherington* v. *Adams*, 309 F.Supp. 318, 320.

But, unlike the present case, *Wetherington* apparently involved a *primary* nomination, not an election, and so far as appears the prospective candidate was a regular party member, not an independent. This could explain the court's reasoning when it said:

> "An additional purpose of the filing fees and assessments would appear to be to provide support, in a monetary form, to political parties so as to encourage and strengthen them. This becomes clear when it is considered that the filing fees do not go to the state to finance the costs of the elections. The filing fees, as well as the assessments themselves made by the party, go to qualified party executive committees. Fla. Stat. § 99.103 (1967), F.S.A. Thus, the purpose of fostering party growth and activity becomes apparent, and all the more so when it is considered that the state conducts the election free of charge." *Id.* at 321.

The *Wetherington* case is therefore not altogether in point; and while, as the *Wetherington* court says, it may be true that serious candidates traditionally attract money

for their candidacy, we cannot say as a matter of law that one's candidacy is not serious or that he does not have the right to run merely because he does not have or has thus far failed to attract a certain amount of money.

In any event we adhere to our opinion in *Jenness, supra*: that to require of an indigent independent candidate in a general election that he come forward with both a nominating petition *and* a qualifying fee, with no other means of getting on the ballot, is a violation of equal protection.

After the hearing in this case, and as the qualifying date (June 10, 1970) approached, the Court entered an interim order postponing the qualifying date, as to these plaintiffs only, until June 22, 1970, pending further orders of the Court. Having now ruled that the plaintiffs do have to comply with the state requirements as to nominating petitions they are entitled to time within which to do so. It is therefore

ORDERED and DIRECTED that if the plaintiffs comply with the nominating petition requirements of this opinion by filing their notice of candidacy accompanied by the petitions with the appropriate number of signatures by September 1, 1970, their names shall be entered on the ballot, and the defendant is hereby ENJOINED from further exacting from them a qualifying fee in such event and upon a showing of inability to pay the fee due to poverty.

IT IS SO ORDERED.

This 22nd day of June, 1970.

/s/ Griffin B. Bell
United States Circuit Judge

/s/ Newell Edenfield
United States District Judge

/s/ Albert J. Henderson, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 13515

[File Endorsement Omitted]

GEORGIA SOCIALIST WORKERS PARTY, LINDA JENNESS, JOSEPH FREDERICK COLE, FRANCIS GRINNON, CLIFFORD D. CONNER, and JIM GWIN, PLAINTIFFS

vs.

BEN W. FORTSON, JR., Individually and as Secretary of State of the State of Georgia, DEFENDANT

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 22, 1970

Notice is hereby given that the Georgia Socialist Workers Party, et. al. the Plaintiffs above named hereby appeal to the Supreme Court of the United States from the final order entered in this action on June 22, 1970, denying injunctive relief as to the Georgia election law's requirement of nominating signatures.

This appeal is taken pursuant to 28 U.S.C. § 1253.

/s/ Howard Moore, Jr.

/s/ Peter E. Rindskopf
Suite 1154, 75 Piedmont, N.E.
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[Clerk's Certificate to Foregoing Transcript Omitted in Printing]

SUPREME COURT OF THE UNITED STATES

No. 5714, October Term, 1970

LINDA JENNESS, ET AL., APPELLANTS

v.

BEN W. FORTSON, Secertary of State of Georgia

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 26, 1970

SUPREME COURT OF THE UNITED STATES

No. 5714, October Term, 1970

LINDA JENNESS, ET AL., APPELLANTS

v.

BEN W. FORTSON, Secertary of State of Georgia

APPEAL from the United States District Court for the Northern District of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 26, 1970

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

Statement not printed ____ Motion to dismiss or affirm not printed

No. 5714

LINDA JENNESS, et al.,

Appellants,

v.

BEN W. FORTSON, JR., Secretary of State of the State of Georgia,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

APPELLANTS' BRIEF

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 5714

LINDA JENNESS, et al.,

Appellants,

v.

BEN W. FORTSON, JR., Secretary of State of the State of Georgia,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

APPELLANTS' BRIEF

OPINION BELOW

The opinion below has been reported *sub nom., Georgia Socialist Workers Party v. Fortson,* 315 F.Supp. 1035 (N.D. Ga. 1970).

JURISDICTION

This is an action for injunctive and declaratory relief in which jurisdiction of the district court was invoked under 28 U.S.C., §§ 1331, 1343 (3) and (4), 2201; 42 U.S.C., §§ 1971, 1981, and 1983; and the First and Fourteenth Amendments.

The complaint sought, *inter alia,* to enjoin enforcement and operation of Georgia's statutory scheme requiring non-party candidates for public office to obtain the signatures of five percent of the number of voters registered at the time the office was last contested before their names could appear on the ballot. A statutory three-judge court was convened pursuant to 28 U.S.C., § 2281, 2284 (A. 20).

The three-judge court determined that it was properly convened but held "[T]he prayers of the plaintiffs' petition respecting the signature requirements are denied" (A. 106). The order denying injunctive relief was entered on June 22, 1970 (A. 98). Timely notice of appeal to this Court was filed in the court below on July 22, 1970. On October 26, 1970, this Court noted probable jurisdiction (A. 110). Jurisdiction of this Court is invoked pursuant to 28 U.S.C., § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action involves the constitutionality of a portion of the Georgia Election Code, Ga. Code Ann. § 34-1010, which is set forth in an appendix *infra* pp. la ff. The entire 1970 amendment to the Georgia Election Code is contained in the Appendix at A. 28-65.

This action also involves the First and Fourteenth Amendments to the Constitution of the United States.

QUESTIONS PRESENTED

1. Whether the provision of the Georgia election code requiring that a non-party candidate for office secure the signatures of a certain number of voters before his name may appear on the ballot violates the First Amendment rights of freedom of speech and association of such candidate and those who support him.

2. Whether the provision of the Georgia election code requiring that a non-party candidate for office secure the signatures of five percent of the voters registered at the time the office was last offered for election before his name may appear on the ballot violates the Fourteenth Amendment right to equal protection of such candidate and those who support him.

STATEMENT

A. Initiation of This Litigation.

On February 18, 1970, the Georgia Socialist Workers Party (GSWP), Linda Jenness, its candidate for Governor of the State of Georgia, Joseph Frederick Cole and Francis P. Grinnon, its candidates for Congressmen in Georgia's Fourth and Fifth Congressional Districts, and Clifford D. Conner and Jim Gwin, registered voters in the Fourth and Fifth Congressional Districts, desirous of voting for and associating with GSWP candidates, brought this action against the Secretary of State of Georgia. The complaint alleged that appellants, and others similarly situated,[1] were denied rights guaranteed by the federal Constitution by the operation of

---

[1]The complaint states that it is a class action under Rule 23(a) and (b)(2), F.R.C.P., by plaintiffs Conner and Gwin on behalf of all other registered voters in the State of Georgia desirous of having an opportunity to consider persons on the ballot other than nominees of the Democratic and Republican parties (Complaint, para. 6(b)) (A. 6-7).

Georgia's statutory provisions providing for nominating petitions as the sole means for non-party candidates for office to have their names placed on the ballot.

Appellee, after seeking and receiving an extension of time, answered by stating that the Georgia Election Code had been reenacted on March 20, 1970 (A. 24, 28 ff.). Appellants amended their complaint to attack the nominating petition provision of the new election code, Ga. Code Ann., § 34-1010 (A. 66).[2]

Appellants contended, *inter alia,* that: (1) they lacked the necessary financial, physical and personnel resources to obtain the number of signatures needed within the time allowed (complaint, para. 14); (2) the number of signatures required is so burdensome and oppressive as to be an invidious distinction between members of political parties and members of other political organizations,[3] and as such, it violates the equal protection clause of the Fourteenth Amendment (Complaint, para. 15); (3) the signature gathering provision is an impermissibly heavy burden upon the rights of speech, petition, and association of the GSWP, its candidates and members (Complaint, para. 15); and (4) the signature gathering provision violates First and Fourteenth Amendment rights of persons who desire to vote for the GSWP or its candidates or who desire to consider the GSWP and its candidates as alternatives on the ballot (Complaint, para. 15) (A. 10-11).

---

[2]The nominating petition provisions of the Georgia Election Code remained unchanged from the old law to the new. The fee necessary for candidates to file with appellee was changed from "reasonable" to five percent of the annual salary of the office sought. The new fee law fell to appellants' challenge (A. 108).

[3]Under Georgia law, a political party is a group whose candidate received twenty percent of the vote at the previous gubernatorial election or had its candidate receive twenty percent of the votes cast in the previous Presidential election. Other affiliations of electors are called "political bodies." Ga. Code Ann. § 34-103(s)-(u).

The complaint sought injunctive and declaratory relief as to the offending provision of state law, Ga. Code Ann., § 34-1010; and asked that appellee be enjoined and restrained from refusing to place the names of appellants Jenness, Cole and Grinnon on the ballot even though they did not submit nominating petitions accompanied by signatures of five percent of voters registered for the previous election in the area over which their candidacies extend (A. 13-14). Because appellants sought injunctive relief restraining the enforcement of a statute of state-wide appliation, a three-judge court was empanelled (A. 20).

B. District Court Proceedings.

After selection of the three-judge court, appellants moved for summary judgment accompanying their motion by brief and proposed findings of fact and conclusions of law, required by local rules, and affidavits of appellants Jenness and Cole, attesting to their candidacies for Governor and Congressman, and lack of finances, respectively, and of Douglas Jenness, State Chairman of the GSWP, attesting to the GSWP's lack of finances (A. 71-76). At the invitation of the lower court, the parties entered into a stipulation of facts (A. 87). Hearing was held before the three-judge court on May 12, 1970, with no further evidence being taken.

Thereafter, the district court entered an order extending the deadline for appellants Jenness, Cole and Grinnon to qualify for their offices from June 10, 1970 to June 22, 1970 (A. 96). On June 22, 1970, the district court entered its order upholding the validity of Ga. Code Ann., § 34-1010, although granting relief against Georgia's qualification fee statute (A. 98 ff.).

The facts, as noted by the district court are not disputed and are as follows:

> Plaintiff Georgia Socialist Workers Party (hereinafter GSWP) is a "political organization" within the meaning of Ga. Code Ann., § 34-103(t). Plaintiff

Linda Jenness is a member of GSWP and desires to be a candidate for governor of Georgia. Plaintiffs Cole and Grinnon are GSWP members and desire to be candidates for Congress for the Fourth and Fifth Congressional Districts, respectively. Plaintiffs Conner and Gwin are voters in the Fourth and Fifth Districts, respectively. They desire to represent, as a class, all registered Georgia voters who desire to consider persons on the Georgia general election ballot other than Democratic or Republican nominees. Defendant is the Georgia Secretary of State.
* * * *

Under the current Georgia law a "political party" is a political organization having candidates or electors who received 20% of the votes cast at the preceding gubernatorial or presidential election. Ga. Code Ann., § 34-103(u). A "political body" is a political organization which, like GSWP, did not maintain candidates for governor or presidential elector who received 20% of the vote in the preceding gubernatorial or presidential election. Ga. Code Ann., § 34-103(s). While political parties may nominate candidates through primaries without submitting nominating petitions, nominees of "political bodies" and independent candidates must file nominating petitions to obtain ballot space. Ga. Code Ann. § 34-1001. These nominating petitions must include the names "of not less than five percent of the total number of electors eligible to vote in the last election for the filling of the office the candidate is seeking . . ." Ga. Code Ann. § 34-1010(b). The total time allowed for circulating nominating petitions is 180 days (Ga. Code Ann. § 34-1010(e)); and the petitions must be filed by 12:00 noon on the second Wednesday in June. Ga. Code Ann. § 34-1002(b). Plaintiffs allege the petition requirements above create an invidious distinction between party members and non-party members and therefore violate plaintiffs' Fourteenth Amendment rights to equal protection of the law. Furthermore, plaintiffs allege the petition requirements unconstitutionally

burden their First Amendment rights to freedom of speech, petition and association as well as their "right to vote." (A. 98-99).

The district court found that the candidate-plaintiffs and the GSWP[4] had standing to challenge the nomination petition requirements. It questioned the standing of the voter-plaintiffs to challenge the nomination petition requirements but did not reach the issue since the standing of the others was clear and the voters sought no relief not requested by the candidates and GSWP (A. 100-101).

The district court regarded appellants' challenge to the nominating petition requirements as based upon the equal protection of laws clause of the Fourteenth Amendment (A. 101). In rejecting appellants' claim, the court below read this Court's prior decision in the area, *Williams v. Rhodes*, 393 U.S. 23 (1968), as turning upon the *totality* of Ohio's restrictive laws:

> It takes no more than a glance at these [Ohio's] combined requirements to see that the Court, in *Williams*, was confronted with much more than a single statute requiring the signatures of 5% of the voters on a nominating petition. Moreover, the Court in *Williams* did not strike down even a 15% requirement as such. Indeed, the Court was very careful to make it clear that it did not do so, and it appears that only Mr. Justice Harlan thought it was exorbitant. As previously stated, what the Court did strike down in *Williams* was the *combination* of restrictions, considering their total effect. This appears from every opinion in the case, majority, concurring, and dissenting (A. 103).

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[4] The jurisdictional statement *in forma pauperis* was originally filed in the names of the GSWP and appellants Jenness, Cole, Grinnon, and Conner with supporting affidavits. The Office of the Clerk informed counsel that the GSWP was not a proper party to proceed *in forma pauperis;* and, submitted the jurisdictional statement to the Court in the names of Jenness *et al.*

The court below therefore declined to say as a matter of law that Georgia's nominating requirement is either unreasonable or that it constituted invidious, intentional, or purposeful discrimination (A. 106). Appellants' prayers for relief with respect to Ga. Code Ann., § 34-1010 were denied and they were given until September 1, 1970, to file notices of candidacy accompanied by nominating petitions with appellee Secretary of State (A. 108).

C. Proceedings Subsequent to Order of the District Court.

Appellants filed a motion for injunction or other relief pending appeal with Mr. Justice Black on or about August 13, 1970, when they filed their jurisdictional statement. That motion was denied on August 25, 1970. A motion to advance was denied on October 26, 1970 when probable jurisdiction was noted.

Appellants did not file nominating petitions with appellee on September 1, 1970.[5] In the Republican gubernatorial primary election, held on September 9, 1970, Hal Suit was the winner with 62,868 votes out of a total of 107,557 cast.

In the November 3, 1970, general election only the nominees of the Democratic and Republican parties appeared on the ballot for state-wide and Congressional offices. A total of 1,045,402 votes were cast for Governor in the general

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[5] As stated to this Court on August 13, 1970,

> Appellants cannot, in candor, meet that [nominating petition] requirement. They do not have the money (as seen by the inability of the candidates to put up $2,125.00 for each office they sought, or of the GSWP to advance that sum for even one office) to pay canvassers or the expense of canvassing. Nor, do they have the membership to either seek out from others or obtain within their own ranks such a number of signatures. Their membership does not exceed the 108 attributed to the Socialist Labor Party in Ohio, *Williams v. Rhodes, supra,* 393 U.S. at 28 (Appellants' Jurisdictional Statement at 5-6).

election;[6] and, a total of at least 1,960,436 voters were registered and eligible to vote in the election.[7]

ARGUMENT

I.

THE NOMINATING PETITION REQUIREMENTS OF THE GEORGIA ELECTION CODE VIOLATE THE FIRST AMENDMENT RIGHTS OF THE APPELLANTS AND OTHER PERSONS WHO DESIRE AN ALTERNATIVE TO THE MAJOR POLITICAL PARTIES.

In *Williams v. Rhodes*, 393 U.S. 23 (1968), this Court held that state laws restricting access to the ballot infringe upon the protected liberties of the First Amendment:

> "In the present situation the state laws place burdens on two different, although overlapping kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First Amendment . . .
>
> "The right to form a party for the advancement of political goals means little if a party can be kept off the election ballots and thus denied an equal opportunity to win votes." *Williams v. Rhodes, supra*, 393 U.S. at 30-31.

Indeed, the Court has recognized the need to protect the freedom of association in circumstances where the state

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[6] Jimmy Carter (Democrat), 620,419; Hal Suit (Republican), 424,983.

[7] According to the office of the Secretary of State (appellee), from which all of the above figures were obtained, there were 1,960,436 registered voters for the 1968 general election. No total is yet available as to this year's total registered votes.

impingement upon the associational activities is at a remove from the direct purposes of the group. Cf. *United Mine Workers of America v. Illinois State Bar Assn.*, 389 U.S. 217 (1967) (Group legal services for union members); *NAACP v. Button*, 371 U.S. 415 (1963) (Legal services for civil rights group). But, in the instant case, restriction of entry upon the ballot strikes at the very heart of the purposes for which appellants seek to band together: they are, by the state's own definition, "an affiliation of electors organized for the purpose of influencing or controlling the policies and conduct of public office through the nomination of candidates for office and, if possible, the election of them." Ga. Code Ann. § 34-103(t). Or, as plaintiff GSWP expressed it below, it "is an unincorporated association of persons devoted to the ideals of socialism through *participatory democracy*. The purpose of the Party shall be to educate and organize the working class for the abolition of capitalism and the establishment of a worker's Government to achieve socialism" (Complaint, para. 3) (A. 5). (Emphasis added).

Of course, the fact that the ideas which appellants have banded together to espouse and urge upon the electorate may be minority or unpopular does nothing to limit the impact of the First Amendment upon them. *Carrington v. Rash*, 380 U.S. 89 (1965). The protection of unpopular ideas is at the very heart of the First Amendment. *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949); *Thomas v. Collins*, 323 U.S. 516, 530 (1945); *Stromberg v. California*, 283 U.S. 359, 369 (1931). The virtue and importance of minority parties has been recognized by the Court. *Sweezy v. New Hampshire*, 354 U.S. 234, 251 (1953).

The ways in which the challenged statute impinges upon the First Amendment rights of appellants are at least two. The first may be seen from the fact that the statute effectively prevents appellants and others whose ideas fail to capture a substantial mass of the electorate from appearing on the ballot at all. In terms of the legitimacy of political

function, appellants are prevented from appearing before the persons they wish to influence at the point most crucial to them: the printed ballot. Without appearing on the ballot, appellants can have no hope of expressing the legitimacy of the political ideas which they espouse; without appearing on the ballot, appellants cannot hope to impress upon the electorate that the ideas they espouse are part of the currency used in the political marketplace.

To say that failure to actually appear on the ballot is no bar to legitimate aspirations (for the write-in has long been allowed in Georgia) is to ignore the Court's teachings in *Williams v. Rhodes, supra.* Cf. *Socialist Labor Party v. Rhodes,* 290 F.Supp. 983, 992-3 (S.D. Ohio 1968) *rev'd, sub nom., Williams v. Rhodes, supra.* (Relief below was limited to requiring state to provide write-in space). Unless a party can have its candidates appear on the ballot, it is unable, figuratively speaking, to say to the electorate, "This is what we stand for, and, when you go into the voting booth, you will be able to choose to support us or not." It is a far cry, in terms of political expression, from merely being able to say, "This is what we stand for, and, when you go into the voting booth, you will be able to choose to support us if you write in the names of our candidates, or, if not, you may vote for any of the candidates whose names appear on the printed ballot in front of you."[8]

The second way the challenged statute impinges upon the First Amendment is in terms of freedom of association. Cutting through the question of the right to appear on the ballot is the First Amendment right of freedom of association. By limiting access to the ballot to those who are either the nominees of the established political parties, cur-

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[8]Or, as phrased by Judge Kinneary, dissenting, in *Socialist Labor Party v. Rhodes, supra:* "This Court should not relegate the thousands of people in this group to the status of second class electors by saying to them; 'Your choice may be written in, but your choice may not be on the ballot.' This is not equal opportunity." 290 F.Supp. at 998.

rently popular individuals, or espousers of a currently popular stance, the state has effectively impaired the freedom of association of those who would espouse ideas that are of necessity minority views.[9] By saying to small groups, "Thou shalt not be seen upon the ballot," the state has discouraged the persons who would support the ideas of appellants from either associating with them or from participating in their attempts to express their views and grievances. Cf. Chafee, *Free Speech in the United States* (1941) at 490-493 ("Excluding Communists from the Ballot"). The Court has long recognized that the First Amendment and the need for judicial protection of those whose activities fall under it go beyond relief from criminal prosecution Cf. *DeJonge v. Oregon*, 299 U.S. 353 (1937); *NAACP v. Alabama ex rel Patterson*, 357 U.S. 449 (1958); *Shelton v. Tucker*, 364 U.S. 479 (1960).

In First Amendment terms, the requirement that a candidate for governor gather 88,175 signatures as a prerequisite to his appearance upon the ballot acts in the nature of a prior restraint upon his ability and the abilities of those who would associate with him—to say nothing of those deterred from such association by recognition of its futility—to express political views. Such restraint is contrary to our tradition of robust and open political discussion. *Bond v. Floyd*, 385 U.S. 116 (1967); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).[10]

The simple nature of Georgia's restriction to entry upon the ballot does nothing to limit its effectiveness. Cf.

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[9]The career of the late Norman Thomas, frequent Socialist nominee for President, shows that minority views need not always be ignored; they may well be adopted by the electorate or its representatives after a change in time and circumstance.

[10]More direct suppression of the unpopular, as *Bond v. Floyd*, *supra*, has a long Georgia history. *Wood v. Georgia*, 370 U.S. 375 (1962); *Herndon v. Lowry*, 301 U.S. 242 (1937); *Wright v. Georgia*, 373 U.S. 284 (1963) Cf. *Carmichael v. Allen*, 267 F.Supp. 985 (N.D. Ga. 1965) (three-judge court).

Harman v. Forssenius, 380 U.S. 528 (1965); *Carrington v. Rash, supra*. It is an absolute bar to those who cannot meet its requirements. There are no alternative solutions for the non-party candidate: he can only make his way onto the ballot if he is able to compile the requisite number of signatures.[11]

The result is that there is a restriction on the right to vote freely for the candidate of one's choice—and that choice is the essence of our democratic society. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964). It is, of course, a restriction that takes place both before and at the polling place. Not only does it restrict the choices printed on the ballot before the voter; the necessary concommitant function of the state's restrictive requirement must be to limit the number of persons who attempt to present themselves to the electorate as possibilities.[12]

In First Amendment terms, a Georgia candidate for governor will never be able to express his ideas to the electorate unless he has been able to meet the considerable burden of gathering over eighty-thousand signatures. This means that the political dialogue is perforce limited to those who (a) are able to amass the funds and manpower to collect such signatures, or, (b) those whose views are compatible with the two majority parties in the state. Left out of

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[11] An additional First Amendment problem, to say nothing of equal protection, arises when one considers the actual signature requirement. It requires the signatory to identify himself, to subject himself to possible subpoena if his identity is questioned (Ga. Code Ann., § 34-1011(b)), and to expose himself in a manner which contrasts with the traditional secret ballot. The "chilling effect" of such public endorsement and identification with potentially unpopular views is obvious. Cf. *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *Bates v. City of Little Rock*, 361 U.S. 516 (1960).

[12] Appellants do not seek for all or more persons to become candidates; rather, their interest is in ensuring that access to the ballot is not limited by state-imposed bars upon political expression.

the political dialogue—voiceless in terms of the ballot—are those whose views do not command support.[13]

Were the State to condition the right to speak or petition upon satisfaction of such a signature barrier, no court would hesitate to strike down the First Amendment violation. The Court has already stricken prosecutions of First Amendment activity arising out of the failure of the speaker or marcher to satisfy the demands of the onlooker, *Terminello v. City of Chicago*, 337 U.S. 1 (1949); *Gregory v. City of Chicago*, 394 U.S. 111 (1969), the demands of fellow legislators, *Bond v. Floyd, supra*, the demands of the judiciary, *Garrison v. Louisiana*, 379 U.S. 64 (1964); *Wood v. Georgia, supra*, and the demands of police-censors, *Cox v. Louisiana*, 379 U.S. 536 (1965).

Indeed, in the prior restraint cases, the Court has applied, as the proper constitutional test for justifying a restriction of First Amendment rights, the "clear and present danger" test. See, e.g., *Thomas v. Collins, supra*, where the Court reversed a union organizer's conviction under a state statute requiring prior registration, saying:

> "That priority [the First Amendment] gives these liberties a sanctity and a sanction not permitting dubious intrustions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. [citing]
>
> "For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger." 323 U.S. at 530.

In the context of elective politics, there is no danger of any sort arising from one's appearance on the ballot. But,

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[13]The courts have not allowed the right to education (*Meredith v. Fair*, 298 F.2d 696 (5th Cir. 1962) *cert. den.* 371 U.S. 828) or entry into business (*Cypress v. Newport News General & Non-sectarian Hosp. Assn.*, 375 F.2d 648 (4th Cir. 1967) (*en banc*)) to be conditioned upon popular support. Political candidacy enjoys at least such constitutional primacy. *United Public Workers of America (CIO) v. Mitchell*, 330 U.S. 75 (1946).

that ballot is the market place for elective ideas; it is the arena in which one must appear to retail one's views and party brand-name. Without being able to appear on the ballot, one can only participate in the political dialogue with a muffled voice. The chance of making one's views known—which is not to say, to prevail in the advocacy thereof—has been significantly impaired by the state's restrictive conditions to entry on the ballot.

II.

THE NOMINATING PETITION REQUIREMENTS OF THE GEORGIA ELECTION CODE VIOLATE THE RIGHTS OF APPELLANTS TO EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT VIS-A-VIS CANDIDATES OF ESTABLISHED POLITICAL PARTIES

In *Williams v. Rhodes, supra,* the Court, having determined that First Amendment rights were at stake in ballot attainment, proceeded to treat the claim in terms of equal protection.[14] The Court recognized First Amendment rights as being fundamental interests and as such entitled to strict equal protection.[15] See, *e.g., The Supreme Court, 1968 Term,* 83 Harv. L.R. 7, 86-97 (1969).

When the state's infringement upon attainment of the ballot is approached in equal protection terms, it requires

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[14] Although Mr. Justice Harlan, concurring, argued that the same result could have been reached under First Amendment principles through the due process clause. *Williams v. Rhodes, supra,* 393 U.S. at 41. Mr. Justice Douglas, concurring, focused directly upon the First Amendment interest at stake. *Williams v. Rhodes, supra,* 393 U.S. at 35.

[15] Other rights which have been recognized include, Voting (e.g., *Harper v. Virginia Bd. of Elections,* 383 U.S. 663 (1966); *Reynolds v. Sims,* 377 U.S. 533 (1964)), interstate travel (*Shapiro v. Thompson,* 394 U.S. 618 (1969)), procreation (*Skinner v. Oklahoma,* 316 U.S. 535 (1942), certain criminal procedures (*Griffin v. Illinois,* 351 U.S. 12 (1956)).

that the state show compelling justification for denying the right. "If the state's objective is not important enough to justify impairment of the individual's interest, the classification will fall." *Developments in the Law–Equal Protection*, 82 Harv. L.R. 1065, 1131-3 (1969). Cf. *McLaughlin v. Florida*, 379 U.S. 184 (1964).

But, the very reasons which this Court faced and rejected in *Williams v. Rhodes, supra,* are the only plausible reasons that a state might offer for restricting access to the ballot: the need to maintain the two-party system; the desirability of having the winning candidate obtain a majority vote; the need for potential officials to satisfy the requirements of a party, resulting in a choice of leadership as well as issues to voters; and, the danger of confusion from a multiplicity of names on the ballot.[16] *Williams v. Rhodes*, 393 U.S. at 31-33.

The State of Georgia has not put forward any reasons for the maintenance of its system of restrictive access to the ballot beyond those put forward by Ohio; and, indeed, it could not have. In his answer, appellee offered appellants' laches[17] as a defense (A. 23); in his brief before the court below, appellee suggested no compelling state interest but instead attempted to distinguish between the Georgia and Ohio requirements in terms of equal protection; and, the same points are the only ones made in appellee's motion to dismiss or affirm and in his brief in opposition to application for issuance of an injunction pending appeal.[18]

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[16]Multiple candidates are not an uncommon phenomenon in Georgia primaries. See, appellee's brief in opposition to application for issuance of an injunction pending appeal, at 1.

[17]The defense of laches was relegated to a footnote by the lower court (A. 106, n.3). Both the lower court and appellee ignored the startling (in terms of laches) fact that appellants filed their suit before the law presently in effect was enacted. See, motion for leave to amend complaint (A. 66).

[18]The financial interest of the state lies in permitting access to the ballot without restriction. It cost $77,000 and $81,000 to examine

There is thus no "compelling state interest in the regulation of a subject within the State's constitutional power to regulate [that] can justify limiting First Amendment freedoms" here. *NAACP v. Button, supra,* 371 U.S. 438, quoted with approval, *Williams v. Rhodes, supra,* 393 U.S. at 31. Without the existence of a legitimate state interest, it matters not that Ohio achieved its objectives through an "entangling web" while Georgia does the job with but one statute. Where constitutional rights are concerned, it is not the number of statutes necessary to achieve the end that count; rather, it is the end. *Green v. County School Board of New Kent County,* 391 U.S. 430 (1968). The Constitution forbids simple-minded as well as sophisticated modes of discrimination. Cf. *Lane v. Wilson,* 307 U.S. 268, 275 (1939).

Nor did the district court find any compelling or other justification for the state's nominating petition requirements. The opinion of the court below focuses exclusively upon the fact that in Ohio there was a complex web of statutes of which the nominating provision requirements were but a part. The gravamen of the lower court's analysis was thus that the nominating petition requirement did not, presumably, violate appellant's rights and was not susceptible of remedy: ". . . this Court simply cannot say, as a matter of law, that Georgia's 5% is either unreasonable or that it constitutes invidious, intentional, or purposeful discrimination. . ." (A. 106). The textual footnote states that "The Court is strengthened in this conclusion by the fact that in the last general election in Georgia a Republican candidate for governor not only did qualify by obtaining the necessary signatures, but in fact went on to receive a plurality of the votes cast" (A. 106 n.2).[19] Of course, in terms of the

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state-wide nominating petitions of the Republican candidate for governor in 1966 and of George Wallace for President in 1968 (A. 88-89). The contrasting cost of printing additional names on the ballot is *de minimus.*

[19]The outcome of that election was at stake in *Fortson v. Morris,* 385 U.S. 231 (1966).

law now challenged, a Republican—as a member of a party polling twenty percent of the national vote—like a Democrat, would no longer need to go the petition route. See, Ga. Code Ann., § 34-103(s).

But, appellants are being denied equal protection *vis a vis* persons who are candidates for election within the State's major political parties; as compared to those major political parties; and, as compared to the supporters and voters for those parties. It is a denial of equal protection that is directly related to appellants' exercise of their First Amendment rights, for if appellants did not have views and ideas that distinguish them from the major parties, they could offer for office within the structure of those parties.[20]

Were appellants able to offer themselves as candidates for office within a party they would automatically have their names printed on the party's primary ballot, thus bringing them squarely before a portion of the electorate. Were appellants to prevail in the primary, they would automatically have their names placed upon the ballot for the general election without regard to the number of persons who participated in the primary, or any number or percentage of votes that they received. It is not inconceivable that a primary involving the lesser of the major parties could have several winners whose vote totals were less than the percentage required for placement upon the general election ballot by signature. Indeed, the winner of the Republican gubernatorial primary this year received fewer votes than GSWP candidate Jenness would have needed signatures to appear on the general election ballot. See, p. 8, *supra*.

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[20]In Georgia as in other states, party nominees are required to take an oath that they support all party candidates. This has led one incumbent Congressman, Charles L. Weltner, to withdraw his name from nomination because he could not support Lester G. Maddox, the party's nominee for Governor. Weltner was the only Southern Congressman to vote for the 1964 Civil Rights Act, 42 U.S.C., § 2000a *et seq.*, while Maddox views on the Act are a matter of public notoriety and judicial note. *Willis v. Pickrick Restaurant*, 231 F. Supp. 396, 234 F. Supp. 179 (N.D. Ga. 1964).

But, the fact that appellant Jenness needed to get more signatures than a primary winner got votes begs the very real question of the unequal burden that is put on the non-party candidate. The party candidate runs in his primary under the auspices of the State. "All such primaries shall be conducted in each district by the poll officers, by the use of the same equipment and facilities, so far as practicable, as are used for such general elections." Ga. Code Ann., § 34-1008 (1970) (A. 40) And, the involvement of the State is financial as well:

> "The expenses of a primary shall be paid by the respective county, except that forms listed under § 34-301(e) [blank ballots, instructions, oaths] shall be furnished upon request by the Secretary of State." Ga. Code Ann. § 34-1009 (A. 40).

The State furnishes to the party candidates a polling place, officers to watch the polls, ballots, voting machines. It lends its official support to the "activity" of gathering "signatures" that the non-party candidate has to gather on his own.[21]

Were party candidates to have to go out and gather ballots on their own, to bring them to the primary polling place, making certain that only a registered voter had gathered those ballots, and making certain that no one gave them a "ballot" who had also given one to another candidate, then—and only then—would the burdens of getting on the ballot be equally distributed. Cf. Ga. Code Ann., § 34-1010(c) and (d), infra, p. 1a, 2a.

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[21] In equal protection terms, the state can thus "directly dictate or casually promote a distinction in the treatment of persons solely on the basis [of their membership in an established political party]." *Hamm v. Virginia State Board of Elections*, 230 F.Supp. 156, 157-8 (E.D. Va.), *aff'd sub nom. Tancil v. Woolls*, 379 U.S. 19 (1965). While *Hamm* was, of course, a race case the distinction between race and political association as grounds for state inequal treatment is slight. Cf. *Nixon v. Herndon*, 273 U.S. 536 (1927); *Nixon v. Condon*, 286 U.S. 73 (1932).

The situation is analogous to that recently condemned by the Seventh Circuit Court of Appeals. In *Shakman v. Cook County Democratic Organization*, ___ F.2d ___, 39 Law Week 2263 (October 23, 1970), the court of appeals reversed a lower court decision denying relief to persons claiming their rights to have been violated by city officials who required city and county patronage employees to furnish votes, campaign work, and financial contributions to the nominees of the regular Democratic party—thus placing at clear disadvantage those candidates and voters who were out of power in city and county government. The interest of candidates in official treatment free from discrimination is entitled to constitutional protection. *Snowden v. Hughes*, 321 U.S. 1 (1944). See, *White v. Snear*, 313 F.Supp. 1100, 1104 (E.D. Pa. 1970). The equal protection clause likewise secures the voter's interest in a voice in government of equal effectiveness with other voters.

While the distinction between the active assistance offered established candidates in *Shakman v. Cook County Democratic Organization, supra*, and the semi-passive assistance offered established party candidates in Georgia is a real one, it is nevertheless a distinction without a constitutional difference. Where the state is providing its official sanction and assistance to certain activities but not to others, and where those activities concern First Amendment rights, then the equal protection clause has been violated. Cf. *Socialist Workers Party v. Rockefeller*, 314 F.Supp. 984 (S.D. N.Y. 1970), *aff'd*, ____ U.S. ____, 39 Law Week 3145 (Law unconstitutional which permits newly registered voters to participate in primaries of established parties but not sign nominating petitions of others).[22]

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[22]Perhaps closer on point, New York failed to show a compelling interest in providing free lists of registered voters to parties getting over 50,000 votes in the previous gubernatorial election, ". . . for granting what, in effect, is a significant subsidy only to those parties which have least need therefor." *Socialist Workers Party v. Rockefeller, supra*, 314 F.Supp. at 995. Georgia grants a more direct subsidy: it puts certain candidates on the general election ballot without the prior showing of popularity it required of appellants.

For a party with less than one hundred members, the burden on gathering 88,175 signatures is simply insurmountable. For a party with little financial backing, the burden is doubly hard. If it cost the Secretary of State $77,000 and $88,000 to examine Republican and American Independence Party petitions in 1966 and 1968, what did it cost to gather those signatures? (A. 88-89).

Thanks to appellants' partial success in the lower court, the burden of costs upon indigent candidates has been partly alleviated. But, for those very candidates to be able, within the party structure, to campaign as they wish and have the voters come to them while the non-party candidates must go out and seek signatures mocks the idea of equal protection.

In the 1966 gubernatorial election from which the Secretary of State took his 1970 five percent figure (88,175 signatures for appellant Jenness to get on the ballot) there were a total of 1,763,500 registered voters. Of that number, only 955,770 actually cast their votes for Governor. See, *Fortson v. Morris, supra,* 385 U.S. at 236. In terms of equal protection, this means two things. First, it means that, measured by the Ohio standard, Georgia requires the signatures of 9.2 percent of the persons who actually voted.[23] If, the test is one of reasonableness, Georgia continues to be among the most stringent of the states. See, *Williams v. Rhodes, supra,* 393 U.S. at 33, n. 9; 393 U.S. at 47, n.10 (Harlan, J., concurring); Jurisdictional Statement at 30-34. Second, it means that the task of gathering 88,175 signatures is likely to be twice as burdensome as it appears on its face. If only half of the registered voters bother to vote, surely no more will be potentially interested in signing a petition in support of Socialist candidates.[24] This only

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[23] But a major party needs get only 20 percent of the votes actually *cast* in the election to keep its position on the ballot without having to gather signatures. Ga. Code Ann., § 34-103(u).

[24] As noted at p. 8, *supra,* the discrepancy between registered voters and those actually voting in the State remains as it did in

emphasizes the very real denial of equal protection: as long as the major parties appeal to a middle-of-the-road group of the electorate, they can retain their right to appear on the ballot regardless of the number of persons actually voting. But, appellants must generate a number of signatures in no way related to either a state interest or to actual turnout of voters. Upon appellants rests the burden of creating enthusiasm before they can even face the electorate.

CONCLUSION

For the foregoing reasons, the decision of the court below should be reversed and Ga. Code Ann., § 34-1010 declared unconstitutional and its application enjoined.

Respectfully submitted,

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1966- meaning that to require 5% of the registered voters' signatures is equivalent to requiring 10% of the signatures of those who actually voted.

APPENDIX

Constitutional and Statutory Provisions Involved

1. Ga. Code Ann., § 34-1010:

Nomination petitions. - (a) In addition to the party nominations made at primaries, nomination of candidates for public office may also be made by nomination petitions signed by electors and filed in the manner herein provided. Such petitions shall be in the form prescribed by the officers with whom they are filed, and no other forms than the ones so prescribed shall be used for such purposes.

(b) A nomination petition of a candidate shall be signed by a number of electors of not less than five percent of the total number of electors eligible to vote in the last election for the filing of the office the candidate is seeking; except that in the case of a candidate seeking the office of judge of the superior court or solicitor general the five percent figure shall be computed only on the total number of such electors of the judicial circuit directly involved.

(c) Each person signing a nomination petition shall declare therein that he is a duly qualified and registered elector of the State entitled to vote in the next election for the filing of the office sought by the candidate supported by the petition and shall add to his signature his residence address, giving municipality, if any, and county, with street and number, if any. No person shall sign the same petition more than once. Each petition shall support the candidacy of only a single candidate. A signature shall be stricken from the petition when the signer so requests prior to the presentation of the petition to the appropriate officer for filing, but such a request shall be disregarded if made after such presentation.

(d) A nomination petition shall be on one or more sheets of uniform size and different sheets must be used by signers resident in different counties. The upper portion of each sheet, prior to being signed by any petitioner, shall bear the name and title of the officer with whom the petition will

be filed, the name of the candidate to be supported by the petition, his profession, business or occupation, if any, his place of residence with street and number, if any, his political party or body affiliation, if he is its nominee for the office he is seeking and the name and date of the election in which the candidate is seeking election. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one nomination petition, and each sheet shall be numbered consecutively, beginning with number one, at the foot of each page. Each sheet shall bear on the bottom or back thereof the affidavit of the circulator of such sheet, setting forth: (i) that the affiant is a duly qualified and registered elector of the State entitled to vote in the next election for the filing of the office sought by the candidate supported by the petition; (ii) his residence address, giving municipality with street and number, if any; (iii) that each signer manually signed his own name with full knowledge of the contents of the nomination petition; (iv) that each signature on such sheet was signed within 180 days of the last day on which such petition may be filed; and (v) that, to the best of affiant's knowledge and belief the signers are registered electors of the State qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county named in the affidavit.

(e) No nomination petition shall be circulated prior to 180 days before the last day on which such petition may be filed, and no signature shall be counted unless it was signed within 180 days of the last day for filing the same.

(f) A nomination petition shall not be amended or supplemented after its presentation to the appropriate officer for filing.

(g) Any political party or body seeking to have the names of their candidates for the offices of presidential electors placed upon the ballot through nomination petitions shall not compile a separate petition for each candi-

date for such office, but such political party or body shall compile their petitions so that the entire slate of candidates of such party or body for such office shall be listed together on the same petition. (Acts 1964, Extra. Sess., pp. 26, 93, 1965, pp. 349, 354; 1968, p. 257; 1968, pp. 871, 877.)

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IN THE

Supreme Court of the United States

October Term, 1970

No. 5714

LINDA JENNESS, et al.,

Appellants,

v.

BEN W. FORTSON, JR., Secretary of State of the State of Georgia,

Appellee.

Appeal from the United States District Court
For the Northern District of Georgia

APPELLEE'S BRIEF

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APPELLEE'S BRIEF

QUESTIONS PRESENTED

1. Does the Equal Protection Clause prohibit the people of a state from providing a nomination petition as an alternative to a political primary as a means of obtaining a place on the general election ballot?

2. Does the right to freedom of association require a state to print on the general election ballot the name of every person who wishes to see his name on the ballot?

STATEMENT

This case is a direct appeal from the final decision of a three-judge district court. While the District Court removed the Georgia Election Code's qualifying fee requirement upon a candidate's showing of inability to pay due to poverty, the Court upheld the nomination petition requirement against the constitutional attacks, repeated in the Brief for the Appellants (hereafter, for simplicity, "Mrs. Jenness").

Generally, a candidate wishing to appear on the general election ballot has the choice of either seeking a political party's nomination in a primary contest or filing a nomination petition. Ga. Code § 34-1001. All candidates must state their choice at the same time, this year on June 10, 1970. Ga. Code §§ 34-1002(b), 34-1005.

The nomination petition must contain at least 5% of the number of electors eligible to vote in the last election for the office the candidate is seeking. Ga. Code § 34-1010(b). This provision has been part of the Election Code since its adoption in 1964.

ARGUMENT

I. THE EQUAL PROTECTION CLAUSE DOES NOT PROHIBIT THE PEOPLE OF A STATE FROM PROVIDING A NOMINATION PETITION AS AN ALTERNATIVE TO A POLITICAL PRIMARY AS A MEANS OF OBTAINING A PLACE ON THE GENERAL ELECTION BALLOT.

Mrs. Jenness argues that requiring a nomination petition from a non-party candidate is a violation of the

Equal Protection Clause. This view is apparently fostered by her belief that somehow a candidate in a political party primary has an easier time of it than a candidate gathering a nomination petition.

Yet, an examination of the paths to the general election ballot in Georgia reveals that the paths are quite equal in their degree of difficulty. A candidate on either path must pay the same qualifying fee[1] and qualify at the same time.[2] The only significant difference is that one candidate must gather a nomination petition while the other must put together a victory in a political primary.

Apparently, Mrs. Jenness has never been involved in a rough and tumble primary battle. If she had been, she would not pass off victory in a primary so lightly nor would she claim that the imbalance between the two paths is so great as to be a denial of equal protection. A typical candidate in a primary race for Governor must expend great amounts of physical effort, time and financial resources if he wishes to win the nomination and qualify for the general election ballot. The most recent primary battle in Georgia involved a field of 12 candidates, from which only two emerged as candidates able to proceed to the general election. Can anyone really believe that in equal protection terms, one route is easier than the other? In a recent similar case involving an equal protection question between the nomination petition of an independent candidate and the political primary requirement of a party candidate, the First Circuit Court of Appeals upheld the constitutionality of the different paths and, while citing *Williams v. Rhodes*, 393

[1]Ga. Code § 34-1013(a).

[2]Ga. Code §§ 34-1002(b), 34-1005(b).

U.S. 23 (1968), characterized victory in a party primary contest as "often a not inconsiderable undertaking". *Lyons v. Davoren,* 402 F.2d 890, 893 (1st Cir. 1968).

This Court has held that the Equal Protection Clause does not make every minor difference in the application of election laws to different groups a violation of the Constitution. It is a violation only when "invidious distinctions" have been enacted. *Williams v. Rhodes,* 393 U.S. 23 at 30 and 39 (1968).

This case does not involve a statute which is aimed at any racial group or other discrete or insular minority. See *Nixon v. Herndon,* 273 U.S. 536 (1927), *U.S. v. Carolene Products Co.,* 304 U.S. 144, 152, n.4 (1938). Political minority groups have a great tendency to sprout and wither with the rise and decline of new political philosophies. A member of today's dominant party may be tomorrow's dissident. Today's minority platforms can be tomorrow's realities. Hence, there is no discrete political group or minority which can be said to be the target of the statute. Neither is there the slightest hint of any such discrimination in the record of this case.

Indeed, if any political body should obtain the required percentage vote in an election, the body automatically becomes a party[3] and must nominate its candidates in a primary.[4] Further, if any party falls below the required percentage it automatically becomes a body and must follow the petition path.[5] As further proof of Georgia's good faith in this area, the Election Code dispenses with a petition requirement in the case of a non-party

[3]Ga. Code § 34-103(u).

[4]Ga. Code § 34-1004.

[5]Ga. Code §§ 34-103(s), 34-1001.

incumbent seeking to succeed himself.[6] The incumbent can qualify for re-election without offering in any primary or gathering a petition.

Neither does this case involve a statute which denies the right to vote to Mrs. Jenness or her group. See *Carrington v. Rash,* 380 U.S. 89 (1965); *Kramer v. Union School District,* 395 U.S. 621 (1969); *City of Phoenix v. Kolodziejski,* 399 U.S. 204 (1970). On the contrary, Georgia allows an elector to sign as many nomination petitions as he chooses and still vote in the primary of his choice. In equal protection terms, it could easily be argued that this arrangement debases the vote of the loyal party member who only votes in the primary since the primary candidate does not need any certain number of votes to win, so long as he receives a majority.

Unquestionably, in *Williams,* there was a wide disparity in the way Ohio treated the two paths to the general election ballot. However, as Georgia has tried to point out above, Georgia has no such disparity of treatment. Unless this Court decides that it is a violation of equal protection *per se* to use the petition method as an alternative to the primary under any circumstances, Georgia believes that its law, taken as a whole, is one of the fairest in the land.

The point has been raised that Georgia's 5% petition requirement is not the lowest in the United States. However, we believe that a comparison of petition requirements based only on the number of signatures needed is extremely misleading unless the entire election scheme

[6]Ga. Code § 34-1002(c)(iv).

is considered. When this is done, it becomes apparent that the disabilities and requirements imposed by the various states on a nomination petition greatly increase the comparative burden on non-party candidates.

For example, California requires that both the candidate and every signer of a nomination petition must swear they did not vote at the preceding primary in which any candidates were nominated for the office sought by the candidate circulating the petition.[7] California also prohibits a candidate from being a registered member of any other political party within a year of the primary.[8]

Georgia imposes no such restrictions.

Colorado requires each signer of a nomination petition to swear that he has not voted at any primary held by any political party to nominate a candidate for the office in question and then the signer must get his signature individually notarized by a notary who can not be the candidate.[9]

Georgia has no such restrictions.

In Louisiana, a voter may only sign one nomination petition for each office and the voter may not be registered as affiliated with any political party.[10]

Georgia has no such restrictions.

In New York, the signer of a nomination petition must state that he intends to support the candidate at the election. Further, a signer is ineligible if he was not registered at the time of the *last* general election or if he voted at

[7]California Elections Code § 6830(c).

[8]California Elections Code § 6830(d).

[9]Col. Rev. Stats. 49-7-1(4), as amended by laws 1967, p. 679.

[10]L.S.A.-R.S. 18: 624(A, B).

any primary where a candidate was nominated for the same office as the petition seeks. Also, a person is ineligible to sign a petition if he has signed any other petition nominating the same or different person for the same office.[11]

Georgia has no such restrictions.

In Rhode Island any voter signing a nomination petition is *thereafter disqualified* from participating in the primary of any political party for the next 26 months. Also, an elector may only sign one petition for each office.[12]

Georgia has no such restrictions.

We emphasize that the above examples are not the result of any exhaustive search of state laws but rather a random sampling of these laws. We cannot say what other unique conditions or disabilities might be uncovered by further search. We can say that Georgia imposes no such burdens on any elector signing nomination petitions.

Finally, Georgia's law does not *bar* a non-party candidate from appearing on the general election ballot. It merely provides an alternative path to the primary path. We do not understand Mrs. Jenness to argue that it would be a denial of equal protection if non-party candidates were required to also be nominated in a primary. Her equal protection complaint is bottomed on an assumed inequality between the two paths. We hope the preceding discussion has shown why the equal protection challenge should not prevail.

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[11]N.Y. Election Law § 138(2, 6).

[12]Rhode Island Laws § 17-16-8.

II. THE RIGHT TO FREEDOM OF ASSOCIATION DOES NOT REQUIRE A STATE TO PRINT ON THE GENERAL ELECTION BALLOT THE NAME OF EVERY PERSON WHO WISHES TO SEE HIS NAME ON THE BALLOT.

Mrs. Jenness argues that because it is impossible for her to fulfill the nomination petition requirement for Governor to appear on the general election ballot, the requirement violates her right to freedom of association and the rights of those in her situation.[13]

Nowhere in the record of this case is there any hint that Mrs. Jenness has ever tried to secure the required petition. Her candor compels her to admit she cannot meet the petition requirement[14] — it stops short of any showing that she or anyone on her behalf has ever tried. She complains because it is necessary for her to expend some effort prior to obtaining a printed spot on the general election ballot. We do not understand the thrust of her argument to be that Georgia's requirement is too high, but rather she argues that any petition requirement is violative of her right to freedom of association.

To date, this Court has not ruled that a State must print on the general election ballot the name of every person who wishes to see his (or her) name on the ballot.

[13]It is unfortunate that Mrs. Jenness chose the high office of Governor as her goal. If her purpose was only to appear on the general election ballot, she would have been well advised to select a lesser office with a smaller total signature requirement. Also, as a State House Representative for example, she would have a forum for the expression of her views, a greater likelihood of success in the election and a more solid base from which to proceed in the political arena, if she so desired.

[14]Brief of Appellant, 8, n.5.

Mrs. Jenness claims that Georgia can advance no other state interest in support of this statute except those advanced by Ohio in *Williams*. Since this Court rejected those interests in *Williams*, Mrs. Jenness concludes that they may not be relied on by any state in upholding the state's election laws.

We do not intend to burden this Court with a repetitious listing of all the possible state interests in election legislation. This Court's expertise and experience in the area exceed any small effort we could muster. Georgia does believe that while these interests may not have been sufficient to overcome the imbalance in Ohio's laws, the same interests are here legitimate in light of Georgia's evenly-balanced statutory scheme. (See I, *supra.*) Must these reasonable state interests be relegated to the scrap heap and never again be relied on in drafting legislation because they once fell short in a case completely different from the case presently before this Court? We hope not.

It is not the purpose of Georgia's petition requirement to bar or prevent Mrs. Jenness from exercising her freedom of association rights. She may meet with any others wherever and whenever she chooses; there is no prior restraint on her right to speak or assemble. She may compete in the market place of ideas through the written media or through television and radio.[15] There is no stigma or penalty attached to any exercise of her rights under the law. *Griswold v. Connecticut*, 381 U.S. 479 (1965). The only possible burden occurs when Mrs.

[15]While some argue that a write-in candidacy is not a complete answer to this problem, at least the FCC has ruled that write-in candidates must be regarded as official candidates and treated as such, including the right to equal time.

Jenness wishes to have her name printed on the general election ballot for governor. In that instance, she and her supporters are asked to expend some effort to gather a 5% nomination petition.

Mrs. Jenness argues that by requiring the signer of a nomination petition to identify himself, there is a violation of the traditional secret ballot and a "chilling effect" which raises First Amendment problems under *Dombrowski v. Pfister,* 380 U.S. 479 (1965). However, nothing in Georgia law requires a statement or insinuation that the signer of a petition agrees to support the candidate. In Georgia, as in most states, an elector can be questioned on his identity by election officials at the proper time whether or not he signs a nominational petition. To the same extent, the secrecy of the ballot is lessened in a primary when an elector must choose and openly acknowledge in which party primary he wishes to vote. No one argues that this has any "chilling effect".

Georgia doubts that there is any real impingement on Mrs. Jenness' constitutional right to freedom of association because of the petition requirement. However, if there is a remote impingement, the necessary interests of the 49 states which depend on these requirements would more than justify it. We believe the people may make this type of reasonable limitation on access to the general election ballot if the limitation is specific in its detail, not overbroad in its reach and applied equally to everyone. *Cox v. Louisiana,* 379 U.S. 536 (1965); *Jeanette Rankin Brigade v. Chief of Capitol Police,* 278 F.Supp. 233 (D.D.C. 1968); *In Re Moskowitz,* 25 N.Y. 2d 933, 252 N.E.2d 629 (1969); *appeal dismissed for*

want of substantial federal question; 396 U.S. 373 (1970).

CONCLUSION

For the reasons stated, Georgia respectfully urges this Court to affirm the judgment of the three-judge court below and allow the 49 states to continue the use of nomination petitions in the election process.

Respectfully submitted,

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NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JENNESS ET AL. *v.* FORTSON, SECRETARY OF STATE OF GEORGIA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

No. 5714. Argued March 1, 1971—Decided June 21, 1971

Georgia law provides that any political organization whose candidate received 20% or more of the vote at the most recent gubernatorial or presidential election is a "political party." Any other political organization is a "political body." "Political parties" conduct primary elections, and the name of the winning candidate for each office is printed on the ballot. A nominee of a "political body" or an independent candidate may have his name on the ballot if he files a nominating petition signed by not less than 5% of those eligible to vote at the last election for the office he is seeking. The time for circulating the petition is 180 days, and it must meet the same deadline as a candidate in a party primary. Electors who sign a nominating petition are not restricted in any way, and there is no limitation on write-in votes on ballots. *Held:* The challenge of appellants, prospective candidates and registered voters, to this election procedure was properly rejected as it does not abridge the rights of free speech and association secured by the First and Fourteenth Amendments and is not violative of the Fourteenth Amendment's Equal Protection Clause. *Williams* v. *Rhodes*, 393 U. S. 23, distinguished. Pp. 4–11.

315 F. Supp. 1035, affirmed.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and DOUGLAS, BRENNAN, WHITE, MARSHALL, and BLACKMUN, JJ., joined. BLACK and HARLAN, JJ., concurred in the result.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 5714.—OCTOBER TERM, 1970

Linda Jenness, et al, Appellants, *v.* Ben W. Fortson, Secretary of State of Georgia.	On Appeal From the United States District Court for the Northern District of Georgia.

[June 21, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.

Under Georgia law a candidate for elective public office who does not enter and win a political party's primary election can have his name printed on the ballot at the general election only if he has filed a nominating petition signed by at least 5% of the number of registered voters at the last general election for the office in question.[1] Georgia law also provides that a candidate for elective public office must pay a filing fee equal to five percent of the annual salary of the office he is seeking.[2] This litigation arose when the appellants, who were prospective candidates and registered voters,[3] filed a class action in the United States District Court for the Northern District of Georgia, attacking the constitutionality of

[1] Ga. Code Ann. § 34–1010.

[2] Ga. Code Ann. § 34–1013.

[3] One of the appellants was the nominee of the Georgia Socialist Workers Party for governor in 1970, two others were nominees of that organization for the House of Representatives, and two others were registered voters who sued on behalf of themselves, and "all other registered voters in the State of Georgia desirous of having an opportunity to consider persons on the ballot other than nominees of the Democratic and Republican parties."

these provisions of the Georgia Election Code, and seeking declaratory and injunctive relief.

A three-judge court was convened pursuant to 28 U. S. C. §§ 2281 and 2284. Thereafter the appellants filed a motion for summary judgment based upon a stipulation as to the relevant facts. The District Court granted the motion and entered an injunction with respect to the filing fee requirement, holding that this requirement operates to deny equal protection of the law as applied to those prospective candidates who cannot afford to pay the fees. No appeal was taken from that injunctive order. With respect to the nominating petition requirement, the District Court denied the motion and refused to enter an injunction, holding that this statutory provision is constitutionally valid.[4] From that refusal a direct appeal was brought here under 28 U. S. C. § 1253, and we noted probable jurisdiction.[5]

The basic structure of the pertinent provisions of the Georgia Election Code is relatively uncomplicated. Any political organization whose candidate received 20% or more of the vote at the most recent gubernatorial or presidential election is a "political party."[6] Any other political organization is a "political body."[7] "Political parties" conduct primary elections, regulated in detail by state law, and only the name of the candidate for each office who wins this primary election is printed on the ballot at the subsequent general election, as his party's nominee for the office in question.[8] A nominee of a "political body" or an independent candidate, on the

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[4] *Georgia Socialist Workers Party* v. *Fortson*, 315 F. Supp. 1035.

[5] 400 U. S. 877.

[6] Ga. Code Ann. § 34–103 (u).

[7] Ga. Code Ann. § 34–103 (s).

[8] See, *e. g.*, Ga. Code Ann. §§ 34–1004, 34–1005, 34–1006, 34–1008, 34–1009 34–1014, 34–1015, 34–1102, 34–1301, 34–1302, 34–1303, 34–1308, 34–1507, 34–1513.

other hand, may have his name printed on the ballot at the general election by filing a nominating petition.[9] This petition must be signed by "a number of electors of not less than five per cent of the total number of electors eligible to vote in the last election for the filling of the office the candidate is seeking . . . ." [10] The total time allowed for circulating a nominating petition is 180 days,[11] and it must be filed on the second Wednesday in June, the same deadline that a candidate filing in a party primary must meet.[12]

It is to be noted that these procedures relate only to the right to have a candidate's or a "political body's" name printed on the ballot. There is no limitation whatever, procedural or substantive, on the right of a voter to write in on the ballot the name of the candidate of his choice and to have that write-in vote counted.

In this litigation the appellants have mounted their attack upon Georgia's nominating petition requirement on two different but related constitutional fronts. First, they say that to require a nonparty candidate to secure the signatures of a certain number of voters before his name may be printed on the ballot is to abridge the freedoms of speech and association guaranteed to that candidate and his supporters by the First and Fourteenth Amendments. Secondly, they say that when Georgia requires a nonparty candidate to secure the signatures of 5% of the voters before printing his name on the ballot, yet prints the names of those candidates who have won nomination in party primaries, it violates the Fourteenth Amendment by denying the nonparty candidate the equal protection of the law. Since both argu-

[9] Ga. Code Ann. § 34–1001.

[10] Ga. Code Ann. § 34–1010 (b).

[11] Ga. Code Ann. § 34–1010 (e).

[12] Compare Ga. Code Ann. § 34–1002 (b) with Ga. Code Ann. § 34–1005 (b).

ments are primarily based upon this Court's decision in *Williams* v. *Rhodes*, 393 U. S. 23, it becomes necessary to examine that case in some detail.

In the *Williams* case the Court was confronted with a state electoral structure that favored "two particular parties—the Republicans and the Democrats—and in effect tend[ed] to give them a complete monopoly." *Id.*, at 32. The Court held unconstitutional the election laws of Ohio insofar as in combination they made it "virtually impossible for a new political party, even though it ha[d] hundreds of thousands of members, or an old party, which ha[d] a very small number of members, to be placed on the state ballot" in the 1968 presidential election. *Id.*, at 24. The state laws made "no provision for ballot position for independent candidates as distinguished from political parties," *id.*, at 26, and a new political party, in order to be placed on the ballot, had "to obtain petitions signed by qualified electors totaling 15% of the number of ballots cast in the last preceding gubernatorial election." *Id.*, at 24–25. But this requirement was only a preliminary. For, although the Ohio American Independent Party in the first six months of 1968 had obtained more than 450,000 signatures—well over the 15% requirement—Ohio had nonetheless denied the party a place on the ballot, by reason of other statutory "burdensome procedures, requiring extensive organization and other election activities by a very early date," *id.*, at 33—"including the early deadline for filing petitions [February 7, 1968] and the requirement of a primary election conforming to detailed and rigorous standards . . . ." *Id.*, at 27.[13]

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[13] In describing these burdens, the Court quoted the description contained in the dissenting opinion of a member of the three-judge District Court from which the appeal in the *Williams* case had come:

"Judge Kinneary describes, in his dissenting opinion below, the

In a separate opinion MR. JUSTICE DOUGLAS described the then structure of Ohio's network of election laws in accurate detail:

> "Ohio, through an entangling web of election laws, has effectively foreclosed its presidential ballot to all but Republicans and Democrats. It has done so initially by abolishing write-in votes so as to restrict candidacy to names on the ballot; it has eliminated all independent candidates through a requirement that nominees enjoy the endorsement of a political party; it has defined 'political party' in such a way as to exclude virtually all but the two major parties.

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legal obstacles placed before a would-be third party even after the 15% signature requirement has been fulfilled:

"'*First*, at the primary election, the new party, or any political party, is required to elect a state central committee consisting of two members from each congressional district and county central committees for each county in Ohio. [Ohio Rev. Code §§ 3517.02–3517.04.] *Second*, at the primary election the new party must elect delegates and alternates to a national convention. [Ohio Rev. Code § 3505.10.] Since Section 3513.19.1, Ohio Rev. Code, prohibits a candidate from seeking the office of delegate to the national convention or committeeman if he voted as a member of a different party at a primary election in the preceding four year period, the new party would be required to have over twelve hundred members who had not previously voted in another party's primary, and who would be willing to serve as committeemen and delegates. *Third*, the candidates for nomination in the primary would have to file petitions signed by qualified electors. [Ohio Rev. Code § 3513.05.] The term "qualified electors" is not adequately defined in the Ohio Revised Code [§ 3501.01 (H)], but a related section [§ 3513.19], provides that a qualified elector at a primary election of a political party is one who, (1) voted for a majority of that party's candidates at the last election, or, (2) has never voted in any election before. Since neither of the political party plaintiffs had any candidates at the last preceding regular state election, they would, of necessity, have to seek out members who had never voted before to sign the nominating petitions, and it would be only these persons who could vote in the primary election of the new party.'" 393 U. S., at 25, n. 1.

"A candidate who seeks a place on the Ohio presidential ballot must first compile signatures of qualified voters who total at least 15% of those voting in the last gubernatorial election. In this election year, 1968, a candidate would need 433,100 such signatures. Moreover, he must succeed in gathering them long before the general election, since a nominating petition must be filed with the Secretary of State in February. That is not all: having compiled those signatures, the candidate must further show that he has received the nomination of a group which qualifies as a 'political party' within the meaning of Ohio law. It is not enough to be an independent candidate for President with wide popular support; one must trace his support to a political party.

"To qualify as a party, a group of electors must participate in the state primary, electing one of its members from each county ward or precinct to a county central committee; two of its members from each congressional district to a state central committee; and some of its members as delegates and alternates to a national convention. Moreover, those of its members who seek a place on the primary ballot as candidates for positions as central committeemen and national convention delegates must demonstrate that they did not vote in any other party primary during the preceding four years; and must present petitions of endorsement on their behalf by anywhere from five to 1,000 voters who likewise failed to vote for any other party in the last preceding primary. Thus, to qualify as a third party, a group must first erect elaborate political machinery, and then rest it upon the ranks of those who have proved both unwilling and unable to vote." 393 U. S., at 35–37.

The Court's decision with respect to this "entangling web of election laws" was unambiguous and positive. It held that "the totality of the Ohio restrictive laws taken as a whole imposes a burden on voting and associational rights which we hold is an invidious discrimination, in violation of the Equal Protection Clause." *Id.*, at 34.[14]

But the *Williams* case, it is clear, presented a statutory scheme vastly different from the one before us here. Unlike Ohio, Georgia freely provides for write-in votes. Unlike Ohio, Georgia does not require every candidate to be the nominee of a political party, but fully recognizes independent candidacies. Unlike Ohio, Georgia does not fix an unreasonably early filing deadline for candidates not endorsed by established parties. Unlike Ohio, Georgia does not impose upon a small party or a new party the Procrustean requirement of establishing elaborate primary election machinery. Finally, and in sum, Georgia's election laws, unlike Ohio's, do not operate to freeze the political status quo. In this setting we cannot say that Georgia's 5% petition requirement violates the Constitution.

Anyone who wishes, and who is otherwise eligible, may be an independent candidate for any office in Georgia. Any political organization, however new or however small, is free to endorse any otherwise eligible person as its candidate for whatever elective public office it chooses. So far as the Georgia election laws are concerned, independent candidates and members of small or newly formed political organizations are wholly free to asso-

[14] MR. JUSTICE DOUGLAS, while joining the opinion of the Court, filed a separate opinion giving emphasis to the First Amendment values involved. *Id.*, at 35. MR. JUSTICE HARLAN filed an opinion concurring in the judgment, explaining why he would have rested decision "entirely on the proposition that Ohio's statutory scheme violates the basic right of political association assured by the First Amendment which is protected against state infringement under the Due Process Clause of the Fourteenth Amendment." *Id.*, at 41.

ciate, to proselytize, to speak, to write, and to organize campaigns for any school of thought they wish. They may confine themselves to an appeal for write-in votes. Or they may seek, over a six months' period, the signatures of 5% of the eligible electorate for the office in question. If they choose the latter course, the way is open. For Georgia imposes no suffocating restrictions whatever upon the free circulation of nominating petitions. A voter may sign a petition even though he has signed others,[15] and a voter who has signed the petition of a nonparty candidate is free thereafter to participate in a party primary.[16] The signer of a petition is not required to state that he intends to vote for that candidate at the election.[17] A person who has previously voted in a party primary is fully eligible to sign a petition,[18] and so, on the other hand, is a person who was not even registered at the time of the previous election.[19] No signature on a nominating petition need be notarized.[20]

The open quality of the Georgia system is far from merely theoretical. For the stipulation of facts in this record informs us that a candidate for governor in 1966[21] and a candidate for President in 1968,[22] gained ballot designation by nominating petitions, and each went on to win a plurality of the votes cast at the general election.[23]

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[15] Contrast, *e. g.*, La. Stats., LSA-R. S. 18:624 (A); N. Y. Election Law, § 138 (6).

[16] Contrast, *e. g.*, Rhode Island Laws, § 17–16–8.

[17] Contrast, *e. g.*, N. Y. Election Laws, § 138 (2).

[18] Contrast, *e. g.*, Cal. Election Code, § 6830 (c); Col. Rev. Stats., § 49–7–1 (4).

[19] Contrast, *e. g.*, N. Y. Election Law, § 138 (2).

[20] Contrast, *e. g.*, Col. Rev. Stats. 49–7–1 (4).

[21] See *Fortson* v. *Morris*, 385 U. S. 231.

[22] This was the candidate whose party Ohio had kept off the ballot in *Williams* v. *Rhodes*, 393 U. S. 23.

[23] As a result, the political bodies that endorsed these two candidates have now presumably acquired the status of political parties.

In a word, Georgia in no way freezes the status quo, but implicitly recognizes the potential fluidity of American political life. Thus, any political body that wins as much as 20% support at an election becomes a "political party" with its attendant ballot position rights and primary election obligations, and any "political party" whose support at the polls falls below that figure reverts to the status of a "political body" with its attendant nominating petition responsibilities and freedom from primary election duties. We can find in this system nothing that abridges the rights of free speech and association secured by the First and Fourteenth Amendments.

The appellants' claim under the Equal Protection Clause of the Fourteenth Amendment fares no better. This claim is necessarily bottomed upon the premise that it is inherently more burdensome for a candidate to gather the signatures of 5% of the total eligible electorate than it is to win the votes of a majority in a party primary.[24] That is a premise that cannot be uncritically accepted. Although the number of candidates in a party primary election for any particular office will, of course, vary from election to election, the appellees' brief advises us that in the most recent election year there were 12 candidates for the nomination for the office of governor in the two party primaries. Only two of these 12, of course, won their party primaries and had their names printed on the ballot at the general election. Surely an argument could as well be made on behalf of the 10 who lost, that it is *they* who were denied equal protection *vis-à-vis* a candidate who could have had his name printed on the ballot simply by filing a nominating petition signed by 5% of the total electorate.

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[24] Georgia provides for a second "run-off" primary election in the event no candidate receives a majority of the votes cast at the original primary election. See Ga. Code Ann. § 34–1513 (a).

The fact is, of course, that from the point of view of one who aspires to elective public office in Georgia, alternative routes are available to getting his name printed on the ballot. He may enter the primary of a political party, or he may circulate nominating petitions either as an independent candidate or under the sponsorship of a political organization.[25] We cannot see how Georgia has violated the Equal Protection Clause of the Fourteenth Amendment by making available these two alternative paths, neither of which can be assumed to be inherently more burdensome than the other.

Insofar as we deal here with the claims of a "political body," as contrasted with those of an individual aspirant for public office or an individual voter,[26] the situation is somewhat different. For it is true that a "political party" in Georgia is assured of having the name of its nominee—the primary election winner—printed on the ballot, whereas the name of the nominee of a "political body" will be printed only if nominating petitions have been filed which contain the requisite number of signatures. But we can hardly suppose that a small or a new political organization could seriously urge that its interests would be advanced if it were forced by the State to establish all of the elaborate statewide, county-by-county, organizational paraphernalia required of a "political party" as a condition for conducting a primary

[25] The argument that the first alternative route is not realistically open to a candidate with unorthodox or "radical" views is hardly valid in the light of American political history. Time after time established political parties, at local, state, and national levels, have, while retaining their old labels, changed their ideological direction because of the influence and leadership of those with unorthodox or "radical" views.

[26] The Georgia Socialist Workers Party was one of the plaintiffs in the District Court, but is not an appellant here. We may assume, however, without deciding, that the individual appellants can properly assert the interests of that "political body."

election.[27] Indeed, a large reason for the Court's invalidation of the Ohio election laws in *Williams* v. *Rhodes, supra,* was precisely that Ohio *did* impose just such requirements on small and new political organizations.

The fact is that there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other. Georgia has not been guilty of invidious discrimination in recognizing these differences and providing different routes to the printed ballot. Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike, a truism well illustrated in *Williams* v. *Rhodes, supra.*

There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization and its candidates on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election. The 5% figure is, to be sure, apparently somewhat higher than the percentage of support required to be shown in many States as a condition for ballot position,[28] but this is balanced by the fact that Georgia has imposed no arbitrary restrictions whatever upon the eligibility of any registered voter to sign as many nominating petitions as he wishes. Georgia in this case has insulated not a single potential voter from the appeal of new political voices within its borders.

The judgment is affirmed.

MR. JUSTICE BLACK and MR. JUSTICE HARLAN concur in the result.

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[27] See, *e. g.*, Ga. Code Ann. § 34–1004.

[28] See *Williams* v. *Rhodes,* 393 U. S., at 47, n. 10 (concurring opinion of MR. JUSTICE HARLAN).